

Ethics Training Supplement for Research Personnel

**USDA, ARS
Human Resources Division
Employee Relations Branch
Ethics Office**

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INTRODUCTION

Americans expect their public servants to remain above reproach. To promote and ensure public trust, research personnel, like all employees of the Federal Government, must be especially sensitive to ethical aspects of their actions. We must place public interest above self-interest and special interests and avoid even the appearance of unethical behavior.

Experience has shown that research personnel generally become involved in ethical dilemmas, not because of deliberate misbehavior, but because they fail to recognize potential ethical problems associated with their official and outside activities. This training supplement provides tools and interpretive experiences to help you improve your skill in identifying subtle ethical issues associated with your activities and enable you to respond appropriately. The case studies contained in this unit were developed around situations in which research personnel have been involved and are designed to provide insights into issues considered when Ethics Advisors provide advice for outside activities.

This supplement is not just about helping you to protect yourself. A major objective is to suggest ways by which a possible conflict can be resolved to your benefit. There are also instances when "the needs of the Agency" outweigh the consequences of an appearance of a conflict-of-interest; thus, discussion of an outside activity with your Agricultural Research Service (ARS) Designated Area Ethics Advisor (DAEA) or Agency Ethics Advisor in the Human Resources Division is important. Disciplinary action for violation of ethics regulations will not be taken against an employee who has acted in accordance with the advice of an Agency ethics official if all of the relevant issues were disclosed when the advice was sought.

Although we have experienced few instances of misconduct in science, the *Code of Scientific Ethics for ARS Scientists* is included in this supplement as a reminder of Agency expectations of its scientific staff. Share it with your support personnel. Unethical behavior in the acquisition and reporting of scientific data by a single individual can tarnish the reputation of the Agency and adversely impact the professional image of each one of us.

This supplement was assembled by an ARS scientist in cooperation with Agency and Departmental Ethics Advisors, based on needs communicated by research personnel and administrators from around the country.

SPECIAL NOTE FOR CLIENTS OUTSIDE ARS

Although this guide was originally written for scientists within the Agricultural Research Service, it contains useful information for research personnel employed by our client agencies. Agency specific guides and case studies herein contain information for the resolution of ethical dilemmas throughout the Federal sector. As you review this material, please keep in mind that your agency-specific procedures for addressing, or notifying management of ethics issues remain in place unless you are otherwise notified.

SPECIAL NOTE ON THE HONORARIA BAN AND STATUTORY PROHIBITIONS

On February 22, 1995, the Supreme Court issued a decision declaring the Honoraria Ban unconstitutional for employees graded GS-15 and below. Later, on February 26, 1996, the Department of Justice, determined that prohibitions of the Honoraria Ban could not be enforced against any employee. (This means that all employees may accept honoraria for outside activities that are not related to their Government work.) Regardless of the sunset of the Honoraria Ban, two statutory prohibitions remain.

**ALL EMPLOYEES ARE PROHIBITED FROM ACCEPTING COMPENSATION FROM
OUTSIDE SOURCES FOR SERVICES AS EMPLOYEES OF THE EXECUTIVE BRANCH.**

**EXCEPT IN VERY SPECIFIC INSTANCES, ALL EMPLOYEES ARE PROHIBITED FROM
RECEIVING COMPENSATION FOR TEACHING, SPEAKING, OR WRITING THAT
RELATES TO THEIR OFFICIAL DUTIES.**

SPECIAL NOTE ON OUTSIDE EMPLOYMENT AND OUTSIDE ACTIVITY

On March, 24, 2000, the U.S. Department of Agriculture published an interim rule in the Federal Register that requires all employees who file a public or confidential financial disclosure report to seek and obtain prior approval to engage in outside employment and activities. The requirement does not prevent employees from seeking outside employment, but helps to prevent employees from getting themselves into situations where it might be perceived by a reasonable person that a conflict may exist.

"Outside employment or activity" means any outside work, service, or activity performed by an employee other than in the performance of official duties. It includes, but is not limited to, such activities as writing, editing, publishing, teaching, lecturing, consulting services, self-employment, working for another employer, management or operation of a private business, personally owned business, partnership, corporation, or any work performed with or without compensation.

Until the USDA Office of Ethics develops a form, employees must use form ARS-101a, "Application for Approval to Engage in Non-Federal Employment or Activity." This form can be found on the REE Ethics Website forms page <www.ars.usda.gov/afm/hrd/hrdhomepage/ethics/ethicsforms.htm>. Approval by the immediate supervisor and appropriate ethics advisor will be based on an assessment that the employment generally does not appear to violate any criminal statutes or other administrative regulations pertaining to ethics. It is not a determination that a criminal or ethical conflict could not arise.

All REE employees considering outside employment should carefully review and be familiar with the provisions of the Standards of Ethical Conduct (5 CFR, Subpart H, §§ 2635.801 - 807) and USDA Bulletin 735-1, Employee Responsibilities and Conduct.

Should you have any questions regarding the new interim rule, feel free to contact your Agency or Area Ethics Advisor.

ADDITIONAL RESTRICTIONS ON OUTSIDE EMPLOYMENT AND OUTSIDE ACTIVITIES

Emoluments Clause of the Constitution of the United States

Prohibits employees from accepting any outside employment with a foreign government or the political subdivision of a foreign government, including a public university or commercial enterprise owned or operated by a foreign government. The ban does not apply to a foreign privately owned corporation or an international organization.

Foreign Gifts and Decorations Act (5 USC 7342)

Prohibits employees from accepting a gift exceeding \$225 in value from a foreign government or an international organization. A prohibited gift even includes travel expenses exceeding \$225 in value unless the travel takes place entirely outside the United States. The restriction extends to the spouse and dependents of the employee. The Agency can, however, accept travel and related expenses from a foreign government as part of U.S. Government duties on behalf of the employee.

Foreign Agents (18 USC 219)

Prohibits an employee from acting as an agent of a foreign principal registered under the Foreign Agents Registration Act unless the head of the agency certifies that the employment is in the national interest.

CODE OF SCIENTIFIC ETHICS

*for the
United States Department of Agriculture
Agricultural Research Service*

I dedicate myself to the pursuit and promotion of beneficial scientific investigation, consistent with the mission of the Agricultural Research Service.

I will never hinder the beneficial research of others.

I will conduct, discuss, manage, judge and report science honestly, thoroughly, and without conflict of interest.

I will encourage constructive critique of my personal science and that of my colleagues, in a manner that fosters harmony and quality amid scientific debate.

I recognize past and present contributors to my science and will not accept unwarranted credit for the accomplishments of others.

I will maintain and improve my professional skills and be a mentor to others.

I will ensure safety and humane treatment of human and animal subjects and will prevent abuse of research resources entrusted to me.

DEFINITIONS

Anti-Lobbying Act

18 U.S.C. Section 1913, prohibits the use of appropriated funds, directly or indirectly, to pay any personal service, advertisement, telegram, telephone, letter, printed or written matter or other device intended to influence a member of Congress.

Appearance of Conflict-of-Interest

A situation in which it could reasonably be concluded that an employee's private interest is in conflict with the employee's Government duties and responsibilities, even though there may not actually be such a conflict.

Authorized Departmental Officer's Designated Representative (ADODR)

An individual who is granted a written limited delegation of authority to represent the Authorized Departmental Officer (ADO) in the administration of an agreement. The individual provides administrative oversight of activities that occur under the agreement and provides technical interactions on behalf of the Agency.

Bribery

The offering, giving, receiving, or soliciting of anything of value to influence an official act of an employee. Often bribery attempts are very subtle and are preceded by attempts to do small favors for, or give gifts to, an employee. Bribery is a violation of the law. Solicitation or acceptance of a bribe by a Federal employee is one of the most serious breaches of the public trust.

Charitable Organization

An organization which is qualified with respect to deductible charitable contributions under 26 U.S.C. 170(c) because it is organized or operated exclusively for scientific, literary, educational or another specified purpose. It includes, but is not limited to, an organization exempt from Federal taxation.

Compensation

Any form of consideration, remuneration or income, including royalties, transportation, lodging, and meals, whether provided "in kind," by purchase of a ticket, by payment in advance or by reimbursement after the expense has been incurred.

DEFINITIONS

Conflict-of-Interest

A situation in which a Federal employee's private interest conflicts with the full, fair, and impartial performance of Government duties and responsibilities. In other words, a situation in which a Federal employee's private interest, usually of an economic nature, conflicts with his or her Government duties and responsibilities. Conflict-of-interest statutes are contained in Chapter 11, Sections 202-209 and 216 of Title 18 U.S. Code.

Consultant

A person referred to for expert or professional advice.

Cooperative Research and Development Agreement (CRADA)

An official document that provides for cooperative research, licensing of patents made under these agreements, and the transfer of a technology from the Agency to another party or from another party to the Agency. A CRADA between a commercial firm and the Agency includes what provisions on research, development, and commercialization will be done by each party, what the Agency will contribute, what the commercial firm will contribute, confidentiality, publication of results, inventions, copyrights, and liability. Scientists and the Agency share licensing fees and royalties.

Covered Position

Position for which the incumbent must file an OGE Form 450, Confidential Financial Disclosure Report.

DAEA

Designated Area Ethics Advisor. Assistant Area Directors, Associate Area Directors, or Area Administrative Officers perform this function in ARS.

Disqualification

A mechanism used to resolve an apparent or actual conflict of interest. A disqualified employee signs a written statement reflecting the scope of the disqualification and the precise nature of the conflicting interest or activity. The Reviewing Official monitors compliance with the statement.

Ethics in Government

That component of ethics which deals with issues of Federal employee responsibilities and conduct and situations that may involve conflict of interest.

DEFINITIONS

Ethics in Science

That component of ethics which deals with scientific integrity, falsification of data, plagiarism, and scientific misconduct.

Ethics Reform Act

The most recent Ethics Reform Act was enacted in 1989 and is referred to as Public Law 101-194. It includes provisions governing post-employment restrictions on the Executive and Legislative Branch; financial disclosure of federal personnel; restrictions on gifts and travel; as well as amendments to Title 18 of the United States Code.

Exception

A case to which a rule, general principle, etc. does not apply.

Exclusion

Something that is not included.

Financial Interest

Broadly defined, any monetary interest of a Government employee, the spouse, minor child, general partner, or entity the employee serves as officer, director, trustee, general partner, or employee.

Freedom of Information Act

Disclosure statute, 5 U.S.C. 552, designed to allow ease of access to documents held by the administrative agencies of the Executive Branch of the Federal Government.

Gift

Almost anything of monetary value, unless consideration of equal or greater value is received by the donor, including any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value such as services as well as gifts of training, transportation, local travel, lodgings, and meals. The following things are not considered gifts: loans and discounts available to the public or to all Federal employees for their private use; inexpensive refreshments, plaques, certificates, trophies, rewards, prizes, and anything paid for by the Government or secured by the Government under Government contract.

DEFINITIONS

Hatch Act

The Hatch Act, Title 5 U.S. Code Chapter 73, prohibits Federal employees from engaging in certain political activities.

Honoraria Ban of 1991

Special Note: On February 22, 1995, the Supreme Court declared the Honoraria Ban unconstitutional for employees graded GS-15 and below. One year later, on February 26, 1996, the Department of Justice determined prohibitions of the Honoraria Ban could not be enforced against any employee. Regardless of the sunset of the Honoraria Ban two statutory prohibitions remain. All employees are prohibited from accepting compensation from outside sources for services as employees of the Executive Branch. Except in very specific instances, all employees are prohibited from receiving compensation for teaching, speaking, or writing that relates to their official duties.

Honorarium

Payment of money or anything of value for an appearance, speech, article, or service.

Imputed Interest

The financial interests of the following persons which could cause a conflict of interest for an employee:

- @ The employee's spouse;
- @ The employee's minor child;
- @ The employee's general partner;
- @ An organization or entity which the employee serves as an officer, director, trustee, general partner or employee; and
- @ A person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

Interested Party

Less preferred term for a prohibited source.

Invention

Any process, art, method, machine, manufacture, design, composition of matter, or any new and useful improvement thereof, or any variety of plant or other biological entity which is patentable or otherwise protectable under the laws of the U.S.

DEFINITIONS

License

A grant to commercially make, use, and/or sell an invention.

Exclusive License

The licensing of an invention to only one licensee.

Nonexclusive License

The licensing of an invention to more than one licensee.

Partially Exclusive License

A license granted occasionally to a very limited number of licensees, for example, for specific fields of use or in a specific geographic area, or both.

Nonofficial Information Material

Information on the official work of an Agency employee that was not prepared on official Government time for non-USDA publication or presentation.

Official Duty Activity

Any activity that may be performed during work hours, using Government resources and at Government expense.

OGE Form 450

Confidential Financial Disclosure Report. Must be filed by employees in certain designated positions in which duties include contracting, procurement, administration of grants and licenses, regulating or auditing of non-Federal entities, or activities having a substantial economic effect on non-Federal entities.

OPM Standards of Conduct Regulations

5 C.F.R. Part 735, a reissue of certain uniform standards of conduct regulations, complementing the uniform standards of ethical conduct issued by the Office of Government Ethics (OGE) (5 C.F.R. Part 2635). The OPM (Office of Personnel Management) regulation provides for restriction on certain gambling activities, conduct prejudicial to the Government, and the special preparation of persons for civil service and foreign service examinations, topics not included in OGE's Standards of Ethical Conduct.

DEFINITIONS

Outside Activity/Employment

Any work, service or activity that is not part of an employee's official duties. It includes, but is not limited to, writing, editing, publishing, teaching, lecturing, consulting services, self-employment, working for another employer, management or operation of a private business, personally-owned business, partnership, or corporation or any work performed with or without compensation.

Patent

A right that a government grants to a specific person or group to allow the holder to control who makes or sells the product or uses the process covered by the patent and to prosecute anyone doing any of these things without a license.

Post-Employment Restrictions

Regulations that prohibit former Federal employees from communicating with current Federal employees with the intent of influencing their/the Agency's actions in matters in which the former employee participated while working for the Federal Government.

Professional Association

A nonprofit, cooperative, voluntary organization of individuals having a common background in a professional, technical, or managerial field of work, requiring knowledge and skills normally acquired only after extensive training or education. Officer positions include, but are not limited to: President, vice-president, secretary, treasurer, trustee, board member, committee chairman, and editor-in-chief.

Prohibited Source

Any entity having financial dealings with the USDA, seeking to do business with the USDA, conducting activities regulated by the USDA or having interests that may be "substantially affected" by the performance or nonperformance of a particular employee's assigned duties. A "prohibited source" may also be an organization a majority of whose members fit any of the above categories.

Recusal

Less preferred term for a disqualification.

DEFINITIONS

Standards of Ethical Conduct for Employees of the Executive Branch

5 C.F.R. Part 2635, ethical conduct standards rule issued by the U.S. Office of Government Ethics with an effective date of February 3, 1993. The regulations provide guidelines by which a reasonable person with knowledge of all of the relevant facts can make an ethical decision.

Technology Transfer

The development, utilization, and commercialization of research.

Technology Transfer Act of 1986

Public Law 99-502, promotes technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements with other Federal agencies, units of State or local government, industrial organizations, public and private foundations, or nonprofit organizations and mandates that inventors receive at least 15% of the royalties received by a Federal agency from the licensing or assignment of inventions under cooperative research and development agreements, if the inventor was an employee of the agency at the time the invention was made.

DISQUALIFICATION NOTIFICATION LETTER

SUBJECT: Disqualification from Actions Involving the
_____ Corporation(s)

TO: Supervisor of Employee Issuing this Memorandum

FROM:

Federal statute prohibits an employee from participating personally and substantially for the Government in any matter in which, to his or her knowledge, he or she has a financial interest (18 U.S.C. 208[a]). The Office of Government Ethics references this statute in the Standards of Ethical Conduct for the Employees of the Executive Branch, Section 2635.402.

I have an interest in the following corporation(s): _____

; therefore, I am disqualifying myself from any actions involving the above corporation(s). Any issues involving this/these corporation(s) should be processed without consultation with me. If my action ordinarily would be required, the appropriate program manager will refer the matter to another employee. My subordinate personnel will continue to exercise the full range of their delegated duties with respect to any matter involving the corporation(s).

Signature

cc:
Ethics Advisor
REE Ethics Office
Each Affected Peer/Subordinate
Appropriate Management Officials

ACCEPTANCE OF GIFTS: EXCLUSIONS AND EXCEPTIONS

Effective February 3, 1993

DOMESTIC GIFTS

Federal employees may not solicit or accept gifts from prohibited sources.

- Applies whether ON or OFF duty.
- Applies to direct or indirect involvement.
- Applies to all types of gifts, including, but not limited to: favors, gratuities, entertainment, or loans (regardless of value.)

Prohibited sources include:

- Any person who has, or is seeking to do, business with the Department;
- Any person who conducts operations which are regulated by the Department;
- Any person who has any interests which may be affected by the employee's official duties;
- Any professional, technical or trade association, the majority of whose members represent prohibited sources; or
- An organization the majority of whose members fit any of the above categories.

Exclusions:

- Coffee, donuts and similar modest items of food and refreshment when offered other than as part of a meal.
- Greeting cards and most plaques, certificates and trophies.
- Prizes in contests open to the public.
- Commercial discounts available to the general public.
- Commercial loans, and pensions and similar benefits.
- Anything paid for by the Government or for which the employee has paid market price.

Exceptions:

- Unsolicited gifts of \$20 or less, per occasion, from a single source. Not to exceed \$50 per source, per year. (Does not include cash)
- Gifts based on a personal relationship.
- Discounts and similar benefits.
- Awards and honorary degrees.
- Gifts based on outside business or employment relationships.
- Gifts from a political organization.
- Speaking engagements and widely-attended gatherings.

ACCEPTANCE OF GIFTS: EXCLUSIONS AND EXCEPTIONS

Effective February 3, 1993

GIFTS BETWEEN EMPLOYEES

Federal employees are prohibited from:

- Directly or indirectly, giving a gift to or making a donation toward a gift for an official superior;
- Soliciting a contribution from another employee for a gift to either his or her own or the other employee's official superior; or
- Coercing the offering of a gift.

Exceptions:

- On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:
 - Items with an aggregate market value of \$10 or less per occasion;
 - Items such as food and refreshments to be shared in the office among several employees;
 - Personal hospitality provided at a residence;
 - Items given in connection with the receipt of personal hospitality if of a type customarily given on such occasions; and
 - Leave transferred under an approved agency leave sharing plan.
- A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:
 - In recognition of infrequently occurring occasions of a personal significance such as marriage, illness, or the birth or adoption of a child; or
 - Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

REQUEST FOR APPROVAL TO ACCEPT AN AWARD FROM A NON-FEDERAL SOURCE

(Provide All Attachments From Organization and Use Supplemental Sheets as Necessary)

Name of Awardee: _____ Area/Division/Staff Office: _____

I. Name of Organization: _____

2. Purpose/mission of organization: _____

3. Name of award and value: _____

4. Is the organization: ☐ Profit Making? ☐ Nonprofit/Professional?

5. Who are the members of the organization? _____

6. Are they prohibited sources (use definition 5 CFR 2635.203(d))? ☐ Yes ☐ No

7. Is this an established awards program? ☐ Yes ☐ No

8. How are the awards funded (where does the money come from)? _____

If award is funded by private industry, do they have authority to approve or disapprove recipient of award?

☐ Yes ☐ No

9. Are other than Federal employees eligible? ☐ Yes ☐ No

10. Who is eligible to nominate candidates? _____

II. What are the nominating procedures? _____

12. Are the selection standards in writing? ☐ Yes ☐ No If so, provide a copy.

13. Who is on the selection panel, and who appoints them? _____

14. Is the selection procedure a one or two-tier system? _____

15. Who makes the final selection? _____

APPROVED ☐ DISAPPROVED ☐

CONCURRENCE:

Designated Area Ethics Advisor
(DAEA)

Date

REE Ethics Advisor

Date

GUIDELINES FOR ACCEPTANCE OF AWARDS FROM NON-FEDERAL SOURCES

1. Name of organization presenting the award, purpose/mission of organization, value of award -
 - a. Is the organization a "prohibited source?"

A prohibited source means any person who:

 - (1) Is seeking official action by the employee's agency;
 - (2) Does business or seeks to do business with the employee's agency;
 - (3) Conducts activities regulated by the employee's agency;
 - (4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
 - (5) Is an organization a majority of whose members are described in (1) through (4) above.
2. Established program of recognition -
 - a. Are the awards made on a regular basis?
 - b. Where do the funds come from?
3. Eligibility -
 - a. Are other than Federal employees eligible?
 - b. What is the nomination process?
4. Selection -
 - a. What are the written standards?
 - b. Who controls selection of the panel?
 - c. Is it a one- or two-tier system?
 - d. Who makes the final selection?

KEY POINTS FOR REVIEW

- c Who are the members of the organization?
- c How is the program administered?
- c How does the selection committee make its final decision?

(Non-prohibited sources must be involved in making nominations, evaluating nominees, and making decisions on who recipient will be.)

REGULATIONS FOR THE ACCEPTANCE OF NON-FEDERAL AWARDS

The Standards of Ethical Conduct for Employees of the Executive Branch 2635.204(d) - prohibits employees from accepting anything of monetary value from a prohibited source. This regulation also defines "prohibited source."

Awards that originate outside the U.S. must be reviewed to be sure we are in compliance with the Foreign Gifts and Decorations Act of 1966.

NOTE: After review, approval for acceptance of awards will be given if:

- c award is from an independent, scientific, professional, nonprofit organization;
- c nominating/selection process is without any input from a prohibited source.

SYNOPSIS OF THE STANDARDS OF ETHICAL CONDUCT

Effective February 3, 1993, the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR Part 2635 replaced the many individual agency standards of conduct regulations with a uniform set of standards applicable to all employees of the Executive Branch. Where necessary, individual agencies have authority to issue supplemental regulations.

Because they are intended to answer questions about the ethical conduct of more than a million individuals employed by more than 100 different Federal agencies, the new Standards of Ethical Conduct are detailed. They contain many examples and readily answer most ethical questions employees have. The attached synopsis has been prepared by the Office of Government Ethics to give employees enough familiarity with the contents of the regulations to recognize ethical issues when they arise and to assist in looking up relevant provisions in the regulations. Because the synopsis provides a shorthand reference to lengthier provisions in the regulations, an employee must refer to the full regulations in resolving ethical issues that arise or may seek the advice of an Agency ethics official.

SYNOPSIS OF SUBPART A - GENERAL PROVISIONS

THE PRINCIPLES OF ETHICAL CONDUCT. The following principles of ethical conduct apply to all officers and employees of the Executive Branch and many form the basis for specific standards set forth in the regulation.

Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

Employees shall not hold financial interests that conflict with the conscientious performance of duty.

Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

An employee shall not, except pursuant to the exceptions in subpart B, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

Employees shall put forth honest effort in the performance of their duties.

Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.

Employees shall not use public office for private gain.

Employees shall act impartially and not give preferential treatment to any private organization or individual.

Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those -- such as Federal, State, and local taxes -- that are imposed by law.

Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or these Standards of Ethical Conduct.

SYNOPSIS OF SUBPART A - GENERAL PROVISIONS (Continued)

BASIC CONCEPTS

Employees shall apply the principles stated above in weighing the propriety of conduct not otherwise addressed in the regulations;

Employees shall judge whether circumstances will violate the appearance principle, the last principle set forth above, from the perspective of a reasonable person with knowledge of the relevant facts.

There are special rules for determining which standards apply to employees detailed to other agencies, to other branches of the Federal Government, to State or local governments or to international organizations.

A violation of the regulatory standards may be cause for corrective action or for disciplinary action against an employee. There are criminal penalties for violations of criminal statutes referred to in the regulations.

Employees are encouraged to seek the advice of agency ethics officials. Disciplinary action for violation of regulatory standards will not be taken against an employee who relies on such advice.

DEFINITIONS. Terms used throughout the Standards of Ethical Conduct, such as "agency designee" and "special Government employee," are defined in subpart A. Terms of more limited applicability are defined in the subparts or sections to which they apply.

SYNOPSIS OF SUBPART B - GIFTS FROM OUTSIDE SOURCES

BASIC PROHIBITION ON GIFTS FROM OUTSIDE SOURCES. An employee shall not solicit or accept a gift given because of his official position or from a prohibited source. A prohibited source is defined as any person, including organization more than half of whose members are persons:

- Seeking official action by his agency;
- Doing or seeking to do business with his agency;
- Regulated by his agency; or
- Substantially affected by the performance of his duties.

DEFINITION OF A GIFT. The term "gift" includes almost anything of monetary value. However, it does not include:

- Coffee, donuts and similar modest items of food and refreshments when offered other than as part of a meal;
- Greeting cards and most plaques, certificates, and trophies;
- Prizes in certain contests open to the public;
- Commercial discounts available to the general public or to all Government or military personnel;
- Commercial loans, and pensions and similar benefits;
- Anything paid for by the Government, secured by the Government under Government contract or accepted by the Government in accordance with a statute;
- Anything for which the employee pays market value.

EXCEPTIONS. Subject to the limitations noted below, there are exceptions which will permit an employee to accept:

- Unsolicited gifts with a market value of \$20 or less per occasion, aggregating no more than \$50 in a calendar year from any source (this exception does not permit gifts of cash or investment interest(s);
- Gifts when clearly motivated by a family relationship or personal friendship;
- Commercial discounts and similar benefits offered to groups in which membership is not related to Government employment or, if membership is related to Government employment, where the same offer is broadly available to the public through similar groups, and certain benefits offered by professional associations or by persons who are not prohibited sources;
- Certain awards and honorary degrees;
- Gifts resulting from the outside business activities of employees and their spouses;

SYNOPSIS OF SUBPART B - GIFTS FROM OUTSIDE SOURCES (Continued)

Travel and entertainment in connection with employment discussions;

Certain gifts from political organizations;

Free attendance provided by the sponsor of an event for the day on which an employee is speaking or presenting information at the event;

Free attendance provided by the sponsor of a widely attended gathering of mutual interest to a number of parties where the necessary determination of agency interest has been made;

Invitations to certain social events extended by persons who are not prohibited sources, provided no one is charged a fee to attend the event;

Certain gifts of food and entertainment in foreign areas;

Gifts accepted by the employee under a specific statute, such as 5 U.S.C. 4111 and 7342, or pursuant to an supplemental agency regulation.

LIMITATIONS ON USE OF EXCEPTIONS. An employee may not use any of the exceptions noted above to solicit or coerce the offering of a gift or to accept gifts:

For being influenced in the performance of official duties;

In violation of any statute;

So frequently as to appear to be using public office for private gain; or

In violation of applicable procurement policies regarding participation in vendor promotional training.

DISPOSITION OF GIFTS. When an employee cannot accept a gift, the employee should pay the donor its market value. If the gift is a tangible item, the employee may instead return the gift. Subject to approval, however, perishable items may be donated to a charity, destroyed, or shared within the office.

SYNOPSIS OF SUBPART C - GIFTS BETWEEN EMPLOYEES

BASIC PROHIBITION ON GIFTS BETWEEN EMPLOYEES. An employee shall not:

Give or solicit for a gift to an official superior; or

Accept a gift from a lower paid employee, unless the donor and recipient are personal friends who are not in a superior-subordinate relationship.

DEFINITION OF A GIFT. The term "gift" has the same meaning as in subpart B. However, car pooling and similar arrangements are excluded where there is a proportionate sharing of the cost and effort involved.

DEFINITION OF AN OFFICIAL SUPERIOR. The term "official superior" includes anyone whose official responsibilities involve directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. The term is not limited to immediate supervisors but applies to officials up the supervisory chain.

EXCEPTIONS. Subject to a limitation on using any exception to coerce a gift from a subordinate, there are exceptions that:

On an occasional basis, including birthdays and other occasions when gifts are traditionally exchanged, permit giving and accepting:

Items other than cash aggregating \$10 or less per occasion;

Food and refreshments shared in the office;

Personal hospitality at a residence;

Appropriate hostess gifts; and

Leave sharing under OPM regulations.

On infrequent occasions of personal significance, such as marriage, and on occasions that terminate the superior-subordinate relationship, such as retirement, permit giving and accepting gifts appropriate to the occasion; and

Permit voluntary contributions of nominal amounts to be made or solicited for gifts of food and refreshments to be shared in the office or for group gifts on occasions such as marriage or retirement described in the preceding paragraph.

SYNOPSIS OF SUBPART D - CONFLICTING FINANCIAL INTERESTS

DISQUALIFYING FINANCIAL INTERESTS. Under the criminal conflict of interest statute, 18 U.S.C. 208, an employee is prohibited from participating in an official capacity in any particular matter in which, to his knowledge, he or certain other persons have a financial interest, if the particular matter will have a direct and predictable effect on his own or that person's financial interests.

APPLICABILITY. In addition to matters that affect his own financial interests, this prohibition applies to particular matters that affect the financial interests of:

The employee's spouse, minor child, or general partner; or

Any person the employee serves as officer, director, trustee, general partner, or employee.

The prohibition also applies to particular matters that affect the financial interests of a person with whom the employee is negotiating for or has an arrangement concerning future employment. However, this aspect of the statute is addressed more specifically in subpart F.

DISQUALIFICATION. Disqualification can be accomplished simply by not participating in the matter. Although an employee should notify the person responsible for his assignment of the need to disqualify, a written disqualification statement is necessary only if required by an ethics agreement or requested by an agency ethics official or the person responsible for the employee's assignment.

SOLUTIONS OTHER THAN DISQUALIFICATION. Disqualification is not required if the financial interest is the subject of one of the statutory waivers described in subpart D or if the employee has sold or otherwise divested the conflicting interest.

PROHIBITED FINANCIAL INTERESTS. In general, employees may acquire and hold financial interests subject only to the disqualification requirement imposed by 18 U.S.C. 208. However, some agencies have statutes that prohibit employees from acquiring or holding particular interests. In addition, subpart D gives agencies the authority, by supplemental regulation, to prohibit employees from acquiring or holding certain financial interests. Agencies also may prohibit an individual employee from holding financial interests where disqualification would impair the employee's ability to perform the duties of his position or adversely affect the agency's mission. An employee directed to divest a financial interest may be eligible for special tax treatment of the transaction.

SYNOPSIS OF SUBPART E - IMPARTIALITY IN PERFORMING OFFICIAL DUTIES

CONSIDERATION OF CERTAIN PERSONAL AND BUSINESS RELATIONSHIPS. Even though his disqualification may not be required under subpart D, an employee should not participate in an official capacity in certain matters without first obtaining specific authorization if, in his judgment, persons with knowledge of the relevant facts would question his impartiality in those matters.

MATTERS COVERED. The matters covered include a particular matter involving specific parties if the employee knows that it is likely to affect the financial interests of a member of his household or that one of the following persons is a party or represents a party in the matter:

A person with whom the employee has or seeks a business or other financial relationship;

A member of the employee's household or relative with whom the employee has a close personal relationship;

A person the employee's spouse, parent, or child serves or seeks to serve as officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;

A person the employee has, in the past year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

An organization, other than a political party, in which the employee is an active participant.

DISQUALIFICATION. Disqualification can be accomplished in the same manner as when required under subpart D for disqualifying financial interests.

AUTHORIZATION TO PARTICIPATE. Notwithstanding the employee's determination that his impartiality would be questioned, the agency designee can authorize the employee to participate in the matter based on a determination that the Government's interest in the employee's participation outweighs the concern that a reasonable person would question the integrity of agency programs and operations. The authorization permitted by subpart E cannot be given, however, if the employee's disqualification is also required by subpart D.

OTHER APPLICATION OF THE PROCESS. Employees are urged to use the process set forth in subpart E to decide whether they should or should not participate in other matters in which their impartiality is likely to be questioned.

EXTRAORDINARY PAYMENTS FROM FORMER EMPLOYERS. An employee is disqualified for two years from participating in any particular matter in which his former employer is a party or represents a party if, prior to entering Federal service, that employer gave him an extraordinary payment in excess of \$10,000.

A routine severance and other payment made under an established employee benefits plan would not be an extraordinary payment.

There is authority to waive all or part of this disqualification requirement.

SYNOPSIS OF SUBPART F - SEEKING OTHER EMPLOYMENT

DISQUALIFICATION WHILE SEEKING EMPLOYMENT. An employee is prohibited from participating in an official capacity in any particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a person with whom he is seeking employment. For this purpose, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services.

DEFINITION OF SEEKING EMPLOYMENT. The term "seeking employment" includes bilateral negotiations with another, mutually conducted with a view to reaching an agreement regarding possible employment. It also includes conduct short of negotiations, such as sending an unsolicited resume or other employment proposal. It can include employment contacts by or through an agent or intermediary. However, it does not include simply:

Rejecting an unsolicited employment overture;

Requesting a job application; or

Sending an unsolicited resume or other employment proposal to a person affected by performance of the employee's duties only as a member of an industry or other discrete class.

Having once begun, an employee generally continues to be seeking employment until he or the prospective employer rejects the possibility of employment and all discussions end. However, an employee is no longer seeking employment with the recipient of his unsolicited resume or other employment proposal after two months have passed with no indication of interest in employment discussions from the prospective employer.

DISQUALIFICATION. Disqualification can be accomplished in the same manner as when required under subpart D for disqualifying financial interests.

SOLUTIONS OTHER THAN DISQUALIFICATION. If the employee's conduct in seeking employment amounts to negotiations, the employee can participate in the matter affecting his prospective employer only if granted an individual waiver described in subpart D. If his conduct falls short of negotiations, the employee may be authorized to participate using the procedures set forth in subpart E.

DISQUALIFICATION BASED ON AN EMPLOYMENT ARRANGEMENT. An employee may not participate in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of anyone with whom he has an arrangement concerning future employment. In this case, an employee may be able to participate in a particular matter affecting a prospective employer only if he has received an individual waiver described in subpart D.

SYNOPSIS OF SUBPART G - MISUSE OF POSITION

USE OF PUBLIC OFFICE FOR PRIVATE GAIN. An employee shall not use his public office for his own private gain or for the private gain of friends, relatives, or persons with whom he is affiliated in a non-governmental capacity, or for the endorsement of any product, service, or enterprise. In particular, an employee shall not use his Government position, title, or authority.

In a manner intended to induce another to provide any benefit to himself or to friends, relatives, or affiliated persons;

In a manner that could be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another; or

To endorse any product, service, or enterprise except in furtherance of statutory authority to do so, in accordance with agency programs to give recognition for achievement or to document compliance with agency standards or requirements.

USE OF NONPUBLIC INFORMATION. An employee shall not engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information to further his own private interests or those of another. Information that is "nonpublic" includes information the employee knows or reasonably should know:

Is routinely exempt from disclosure under the Freedom of Information Act or protected from disclosure by statute;

Is designated as confidential by an agency; or

Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

USE OF GOVERNMENT PROPERTY. An employee has a duty to protect and conserve Government property and to use Government property only for authorized purposes. Authorized purposes are those for which Government property is made available to the public or those purposes authorized in accordance with law or regulation.

USE OF OFFICIAL TIME. Unless authorized in accordance with law or regulation to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. And, an employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or those authorized in accordance with law or regulation.

SYNOPSIS OF SUBPART H - OUTSIDE ACTIVITIES

GENERALLY. In addition to the standards set forth in subpart H, an employee's outside employment and other activities must comply with all ethical requirements set forth in the subparts A through G of the regulation, including the requirement to avoid even the appearance of using public office for private gain. For example, the prohibition against use of Government property for unauthorized purposes would prohibit an employee from using the agency photocopier to reproduce documents for his outside organization.

RESTRICTIONS IMPOSED BY OTHER LAWS. An employee's outside employment and other activities must comply with applicable laws other than the Standards of Ethical Conduct. Several are listed in subparts H and I. Outside activities frequently raise questions about the following:

The restrictions in 18 U.S.C. 203 and 205 on employees engaging in representational activities before the United States;

The constitutional prohibition against accepting any office, title, or compensation from a foreign government; and

The Hatch Act, which prohibits most employees participation in certain partisan political activities.

PRIOR APPROVAL FOR OUTSIDE ACTIVITIES. When required by supplemental agency regulation, an employee shall obtain approval before engaging in outside employment or activities.

CONFLICTING OUTSIDE ACTIVITIES. An employee shall not engage in outside employment or activities prohibited by statute or by supplemental agency regulation, or that would materially impair the ability to perform his official duties by requiring his disqualification under subpart D or E.

RESTRICTIONS ON RECEIPT OF COMPENSATION. With certain exceptions, Presidential appointees to full-time noncareer positions shall not receive any outside earned income for outside employment or other outside activities performed during that appointment. Higher-level noncareer employees may not, in any calendar year, receive outside earned income which exceeds 15 percent of the rate of pay for Level II of the Executive Schedule. These noncareer employees also are prohibited from receiving any compensation for teaching without prior approval, serving as officers or board members of outside entities, practicing certain professions or being affiliated with firms or other entities that practice those professions.

SERVICE AS AN EXPERT WITNESS. In the absence of specific authorization, an employee shall not represent anyone other than the United States as an expert witness in any proceeding before a court or agency of the United States if the United States is a party or has a direct and substantial interest. The restriction applies even though no compensation is received. A less restrictive standard applies to special Government employees.

TEACHING, SPEAKING, AND WRITING. An employee shall not receive compensation for teaching, speaking, or writing that is related to his official duties.

SYNOPSIS OF SUBPART H - OUTSIDE ACTIVITIES (Continued)

DEFINITION OF RELATED TO DUTIES. Teaching, speaking, or writing is "related to an employees official duties" if:

The activity is undertaken as part of his official duties;

The invitation to engage in the activity was extended primarily because of his official position;

The invitation or the offer of compensation was extended by a person whose interests may be affected by the employee's official duties;

The information draws substantially on nonpublic information; or

For most employees, the subject of the teaching, speaking, or writing deals in significant part with any matter presently assigned to the employees, any matter to which the employee had been assigned in the previous one-year period, or to any ongoing or announced policy, program, or operation of his agency. Certain noncareer employees are subject to additional restrictions and special Government employees are subject to less restrictive standards.

EXCEPTIONS FOR TEACHING. An employee may receive compensation for teaching certain courses, notwithstanding that the subject matter is related to his official duties and notwithstanding that he may have been offered the opportunity because of his official position.

FUNDRAISING. Provided that he does not otherwise violate the Standards of Ethical Conduct, an employee may engage in charitable Fundraising activities in a personal capacity if he does not use his official title, position, or authority to further that effort or personally solicit funds or other support from subordinates or from anyone known to him to be a prohibited source for purposes of the gift restrictions in subpart B. A special Government employee, however, may solicit charitable contributions from a prohibited source as long as that person does not have any interests affected by the performance of his official duties.

JUST FINANCIAL OBLIGATIONS. Employees shall satisfy in good faith all just financial obligations.

Executive Order 12821 of November 16, 1992

Improving Mathematics and Science Education in Support of the National Education Goals

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the provisions of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3701, et seq.), and the Federal Property and Administrative Services Act of 1949, ch. 288, 63 Stat. 377 (codified as amended in scattered sections of the United States Code), and in order to ensure that Federal departments, agencies, and laboratories assist in mathematics and science education to meet the National Education Goals, it is hereby ordered as follows:

Section 1. Assistance in Mathematics and Science Education.

- (a) Each executive department and agency (hereinafter referred to as "agency") that: (i) has a scientific mission; (ii) employs significant numbers of scientists, mathematicians, and engineers; or (iii) has a Federal laboratory; as determined by the Committee established by section 2(d) of this order, shall, to the maximum extent permitted by law:
 - (1) Assist in the mathematics and science education of our Nation's students, teachers, parents, and the public by establishing programs at their agency to provide for training elementary and secondary school teachers to improve their knowledge of mathematics and science. Such programs, to the maximum extent possible, shall involve partnerships with universities, State and local elementary and secondary school authorities, corporations, and community based organizations. These activities shall be coordinated with other relevant Federal teacher training programs (e.g., those administered by the National Science Foundation, the Department of Education, and the Department of Energy). Because of its extensive experience in teacher training programs at its Federal laboratories, the Department of Energy, when requested by other agencies, shall assist in the development of these activities.
 - (2) Provide brief periods of excused absence for Federal employees to assist in the conduct of mathematics and science education programs, in accordance with guidelines of the Office of Personnel Management.
- (b) Develop, within 6 months of the issuance of this order, an implementation plan to fulfill the requirements of this section. The plan shall be consistent with approved agency budget totals. The plan shall be coordinated through the Committee on Education and Human Resources of the Federal Coordinating Council for Science, Engineering, and Technology.

Executive Order 12821 of November 16, 1992 (Continued)

Sec. 2. Transfer of Education-Related Federal Equipment to Elementary and Secondary Schools.

- (a) To the maximum extent permitted by law, all agencies shall give highest preference to elementary and secondary schools in the transfer or donation of education-related Federal equipment. All such transfers to the schools shall be made at the lowest cost permitted by law.
- (b) Each agency, to the maximum extent permitted by law, shall:
 - (1) Identify and transfer excess education-related Federal equipment at that agency that can be transferred to elementary and secondary schools by:
 - (A) Direct transfer of excess Federal research equipment in accordance with the provisions of subsection 3710(i) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710(i)). The transfer of such excess equipment shall be reported to the General Services Administration (GSA); or
 - (B) Reporting such excess equipment to the GSA for donation when declared surplus in accordance with the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484(j));
 - (2) Allow the elementary and secondary schools sufficient time to select available education-related Federal equipment before it is disposed of elsewhere;
 - (3) Provide training and technical assistance, where possible, to recipients of education-related Federal equipment to ensure that the equipment will be utilized to its full capability; and
 - (4) Attempt to provide education-related Federal equipment to those elementary and secondary schools with the greatest need or to the recipients of federally funded mathematics and science projects where the equipment would further enhance the progress of the project.
- (c) The GSA shall:
 - (1) To the maximum extent permitted by law, ensure that elementary and secondary schools are notified of the opportunity to obtain education-related Federal equipment, and, where practical, provide to elementary and secondary schools a current listing of education-related Federal equipment that is available for transfer, and, when requested, provide a current listing of this available equipment to agencies; and
 - (2) Maintain a record of the education-related Federal equipment provided to elementary and secondary schools pursuant to this order.

Executive Order 12821 of November 16, 1992 (Continued)

- (d) There is hereby established a Coordinating Committee on Education-Related Federal Equipment (Committee). The Committee membership shall include, but not be limited to, representatives of the Departments of Defense, Education, Energy, and Health and Human Services, the National Science Foundation, the General Services Administration, and the National Aeronautics and Space Administration.
 - (1) The Co-chairs of the Committee shall be the Administrator of General Services and the Secretary of Education, or their designees.
 - (2) The Committee shall assess the availability of appropriate education-related Federal equipment and mechanisms for expeditious notification and transfer of the equipment to elementary and secondary schools and shall resolve issues that may arise in implementing this order.
 - (3) The Committee shall inform, as necessary, non-Federal groups (e.g., National Governors Association, State Agencies for Surplus Property, etc.) of issues concerning the transfer of education-related Federal equipment.
 - (4) The Committee may consult with the Committee on Education and Human Resources of the Federal Coordinating Council for Science, Engineering, and Technology concerning activities outlined in this order, particularly those activities listed in section 1 of this order.

Sec. 3. Definitions. For the purposes of this order:

- (a) "Education-related Federal equipment" means excess or surplus personal computers and related peripheral equipment, research equipment, and education-related equipment that is appropriate for use in mathematics and science curricula in elementary and secondary school education.
- (b) "Elementary and secondary schools" means individual public or private educational institutions encompassing kindergarten through twelfth grade, as well as public school districts.
- © "Federal laboratories" has the meaning set forth in the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)).
- (d) "Research equipment" means excess or surplus Federal property appropriate for mathematics and science education activities at the elementary and secondary education levels, as defined by and in accordance with the regulations of the agency that owns the research equipment.

THE WHITE HOUSE,

November 16, 1992.

CASE STUDIES

The case studies contained in this unit were developed around situations in which ARS scientists have been involved. For each case, some background information is given. Lettered items that follow express concerns of the scientist. Consider each issue or proposal and determine whether accomplishment of the proposed activity is appropriate. Your decision should be one which you might expect from a reasonable person with knowledge of all of the relevant facts.

This is **NOT** a multiple choice exercise; for each lettered item, you are to analyze the information provided and make a judgement. Scenarios are independent of each other.

Case 1: Dr. Green--School Landscape Project

Dr. Green, an Agency Horticulturist who is studying the genetics of an endangered birch tree, has been approached by a member of the School Improvement Council from the Public Junior High School. Among the Council's projects for the new year is landscaping the adjacent, vacant lot that Mr. Hammer donated to the school after his 45-year-old Academic Lumber and Hardware business burned to the ground. The group needs guidance from someone who is familiar with trees and shrubs.

- A. Dr. Green wants to donate excess plants from his/her research program at the Arboretum to assist the school's landscape project and wishes to use personal time to launch a campaign to raise funds for the project and solicit donations of fertilizer, landscape timbers, mulch, and grass seeds from local suppliers of these materials.
- B. Dr. Green wants to work with the Sixth Grade Science students to landscape the property on official time since this activity is a means whereby Dr. Green can assist the school's mathematics and science education programs.
- C. Dr. Green wishes to take two hours of annual leave each Friday during the month of April to assist with the school's landscape project and wants to accept an honorarium for his efforts. Students in the Green Thumb Club will meet with Dr. Green after school to receive instruction on plant selection, site preparation, and planting techniques and gain hands-on experience by landscaping the vacant lot.
- D. Dr. Green wants to work on the project as an outside activity and be compensated for landscaping the property.
- E. Ms. Beam, a reporter for **City News**, is writing a feature article about the School Landscape Project for the newspaper's weekly *Education* section. Dr. Green wants to accept Ms. Beam's invitation to lunch to discuss the project.

Case 1 Analysis: Dr. Green--School Landscape Project

- A. The Agency may donate excess supplies to a public school [2635.704] To avoid the appearance of preferential treatment of the school, Dr. Green may not donate plants unless similar materials can be made available to other schools for similar projects [2635.502, 2635.702]. Dr. Green may not selectively solicit monetary contributions or request donations of supplies from prohibited sources [2635.808] and must not use or allow the school to use the scientist's name or identity in its correspondence with prohibited sources concerning the project [2635.702]. Dr. Green may, however, assist the fundraising effort by drafting correspondence, assisting with mailings, or accounting for contributions [2635.808]. Furthermore, Dr. Green must contact his/her Area Property Management Officer for advice on determined suitability for the release of Government property [ARS Manual 221.1].
- B. By authority of Executive Order 12821, Government scientists can be excused for brief periods during duty hours to assist in the conduct of math and science education programs. Dr. Green must ensure that student education, and not school property beautification, is the objective of the Agency activity.
- C. The landscaping project is not directly related to Dr. Green's official duties; the school's request for his involvement was based on the scientist's expertise, rather than the affiliation with the Agency; and the school is not a prohibited source. On personal time, Dr. Green will present lessons on four separate occasions on different, but related, topics. Dr. Green may accept an honorarium [2635.807; 2636.203].
- D. The school is not a prohibited source and the landscaping project is not related to Dr. Green's official assignment, will not involve nonpublic information derived from Dr. Green's research, and will not impair Dr. Green's capability to perform his/her official duties. Assuming the school is willing to pay, Dr. Green may do the landscaping on personal time and accept compensation [2635.802].
- E. Dr. Green may accept the lunch invitation and allow Ms. Beam to pay for the meal, if the cost is less than \$20.00 [2635.204]. If Dr. Green's involvement in the project has been on personal time, he/she must not refer to his/her official title or position during the interview [2635.702]. If Dr. Green's involvement with the project has been a component of his/her official duties, he/she must not divulge nonpublic information during the interview [2635.703], must not convey the appearance of loss of impartiality [2635.501-502], and must not comment on government policy [2635.807].

Case 2: Dr. Green--Garden Shop and Church Beautification Project

Dr. Green, an Agency Horticulturist who is studying the genetics of an endangered birch tree, is an active participant in the Men's Sunday School Class at Community Church and often provides floral arrangements for church functions using flowers from his extensive home gardens. One evening, several months after a fire destroyed the 45-year-old Churchside Lumber and Hardware business located adjacent to the church, Mr. Hammer, Churchside's owner and teacher of the Men's Sunday School Class, visited Dr. Green to discuss plans for the church bazaar. During the course of the conversation, Mr. Hammer mentioned that he wanted to replace his lumber and hardware operation with a garden shop, a "hobby project" for his "retirement" from the lumber and hardware business. Before the visit was over, Mr. Hammer asked Dr. Green to provide "some guidance" concerning the landscaping of the garden shop facilities because it was located adjacent to the church and "he wanted to create an attractive neighborhood setting for the church."

- A. Dr. Green wishes to use excess plants from his research studies at the Arboretum for the landscaping project. In return, Mr. Hammer will give the Arboretum a 10% discount on potting media, fertilizer, and other greenhouse supplies.
- B. Dr. Green wants to help with the landscaping project. He/she will not use knowledge and information acquired in his/her position at the Arboretum and will not be compensated.
- C. Dr. Green wants to sign a contract with Mr. Hammer and accept compensation for landscaping the garden shop. Dr. Green will be recognized during Grand Opening Ceremonies.
- D. Dr. Green has suggested, and Mr. Hammer has agreed, that they become partners in the business. This partnership would create a local business capable of providing plant materials to this Agency location.

Case 2 Analysis: Dr. Green--Garden Shop and Church Beautification Project

- A. Dr. Green must not give preferential treatment to a prohibited source [2635.502] and may not use his/her public office [2635.702] or government property [2635.704] for the private gain of a friend. Dr. Green may not solicit, accept, or agree to receive, directly or indirectly, anything of value given because of his/her official position [2635.202] or in return for being induced to take an action in violation of his/her official duty [18 U.S.C. 201(b)], even if there is benefit to the Government.
- B. Mr. Hammer is not a prohibited source. Dr. Green may help with the landscaping project [2635.203d, 2635.801, 2635.802]
- C. Mr. Hammer is not a prohibited source and the job will not create a conflict-of-interest with Dr. Green's official duties or interfere with his/her ability to do his/her Federal work. The landscaping job can be conducted, but Dr. Green must not allow the contractual business to take his/her time and attention during his/her official work hours, may not ask or require subordinates to use official time to perform activities associated with the contract [2635.705], and may not use Government property and nonpublic information in performing contractual business [2635.704]. As the contractor, a horticulturist by training, and a member of the Community Church, Dr. Green may be recognized during Grand Opening Ceremonies for the Churchside Garden Shop, but Mr. Hammer may make no reference to Dr. Green's association with ARS, even in a biographical sketch on the printed program for the ceremonies [2635.702]. Also, Community Church may not mention Dr. Green's affiliation with ARS in its acknowledgment of the beautification effort in the church bulletin.
- D. Dr. Green may become a partner with Mr. Hammer. The arrangement will give Dr. Green a financial interest, but will not create a conflict with Dr. Green's official duties [2635.802]. As a consequence of Dr. Green's employment by the Agency and his partnership with Mr. Hammer, the Community Garden Shop is a prohibited source, not only for the Agency, but for all other agencies within the Department. Neither Dr. Green nor Mr. Hammer may represent the shop to the Government [2635.401, 2635.702, 18 U.S.C. 208(a)] and Dr. Green must adhere to prohibitions cited in item C.

Case 3: Dr. Waters--Trout Fishing Guidelines

Dr. Waters, an Agency Aquatic Biologist, is recognized internationally for the development of techniques for aquaculture of trout using mine water. Outside of work, Dr. Waters is an avid fisherman and has several trophies for success in regional fishing competitions. Nature Publishers has asked Dr. Waters to write a chapter on *Identifying a Good Trout-Fishing Site* for its book **Fishing Tips**. Dr. Waters is excited by the opportunity to share his/her latest observations concerning trout feeding habits through a publication that will become a handbook for fishing enthusiasts but thinks there may be merit in publishing the information in an article for the magazine **Fish and Stream**.

- A. Dr. Waters wants to write the book chapter on official time because the subject is closely linked to his/her research on trout nutrition.
- B. Dr. Waters wants to write the book chapter on personal time, sharing all he/she knows about the feeding habits of trout and wants to accept the \$250 the publisher will pay.
- C. Dr. Waters wants to write the **Fish and Stream** article on official time, emphasizing unpublished observations made during the course of the research on trout nutrition, so that publication credit can be received under the "Dissemination of Results" section of his/her performance standards. Dr. Waters wants the \$50 the publisher will pay to go to the Nature Conservancy because it has an interest in aquatic organisms and is a charitable organization supported by the Combined Federal Campaign.

Case 3 Analysis: Dr. Waters--Trout Fishing Guidelines

- A. If the chapter will focus primarily on Dr. Waters' research results or contains nonpublic information, it must be prepared as a part of Dr. Waters' official assignment, and management must decide whether it is in the interest of the Agency for Dr. Waters to write the chapter [2635.807]. Dr. Waters may not accept compensation from the publisher for a chapter written on official time [2635.807, 2635.702, 18 U.S.C. Section 209].
- B. If the information to be included is unrelated to Dr. Waters' assigned duties or is within his/her inherent expertise based on educational background and fishing experience, he/she may prepare the chapter on personal time, even though the subject matter is related to the activities of the Agency [2635.807]. The chapter may refer to observations Dr. Waters made during the course of his/her research experiments, but only if they have been published previously and are not a substantial component of the chapter [2635.703]. The chapter must be prepared without the use of Government property [2635.704] or reference to Dr. Waters title or position [2635.702]. Under these conditions Dr. Waters may accept compensation from the publisher.

Preparation and publication of nonofficial information material must be approved by the Information Staff and must be cleared by the National Program Leader for technical accuracy, the Information Staff for policy review and assurance that information detrimental to the Agency is not contained, and the Office of Public Affairs for review if the material interprets policies of USDA, deals with sensitive areas of programs or needs clearance with other Departments or Agencies that are referenced. Disclaimer statements must be included or names of commercial products must not be mentioned. The material can be copyrighted and the employee can receive royalties [ARS P&P 150.1].

- C. With the approval of management, Dr. Waters can write the article on official time. Although the Nature Conservancy is a charity to which an honorarium may be directed, Dr. Waters may not so direct the \$50 he/she has been offered because the money is compensation for work conducted as part of official duties [18 U.S.C. Section 209].

Case 4: Dr. Fields--Land Use and Disposal

Dr. Fields, an Agency scientist who conducts agroforestry research, has inherited a 500-acre farm near the research facility. Fifty percent of the farm is in standing timber; the remaining land has been seeded to a mixture of grasses and legumes. A two-bedroom farmhouse is located on the property.

- A. Dr. Fields wants to allow the neighboring farmer to pasture beef cattle on 35 acres of the property in exchange for a processed steer at slaughter time. He/she wants to lease the crop land to a tenant farmer who will also rent the farmhouse.
- B. Dr. Fields wants to convert the farm into a residential development. Dr. Fields will advertize lots in the local newspaper and meet prospective buyers in the evenings or on the weekends.
- C. Dr. Fields wants to cooperate with Pioneer Hybrid Seed Company in conducting alfalfa variety trials on the property. The company will pay \$50 per acre of roadside land used and label varieties conspicuously for public viewing.
- D. Dr. Fields wants to participate in the Federal Timber Stand Improvement Program administered by the Agricultural Stabilization and Conservation Service. Nonproductive trees in the ten-acre program allotment for the current year will be marked for removal by the State Forester. Dr. Fields will use the \$450 received from the program to compensate Mr. Twigg for cutting the trees. The wood will be used to heat the Fields' residence.
- E. Dr. Fields wants to establish some demonstration sites on the farm to promote public visibility of new forage species developed by the Agency Agronomy group.

Case 4 Analysis: Dr. Fields--Land Use and Disposal

- A. Dr. Fields may release portions of the property to pasture beef cattle and to raise crops. He/she may also rent the farmhouse. These arrangements are not related to his/her official work in agroforestry research. Moreover, he/she has no official dealings with any of the individuals making use of the farm [2635.702, 2635.801, 2635.802].
- B. This activity does not conflict with Dr. Fields' official assignment and Government property and official time will not be used to communicate with prospective buyers [2635.801, 2635.802, 2635.704, 2635.705].
- C. Participation in the alfalfa variety trials would create an appearance, if not an actual, conflict with Dr. Fields' official assignment. Dr. Fields would have a covered relationship with the seed company which could cause a reasonable person to question Dr. Fields' impartiality, interpret Dr. Fields' involvement as Government endorsement of the seed company's products, or conclude that Dr. Fields benefitted personally as a consequence of his/her official position with the Government [2635.502, 2635.702, 2635.801, 2635.802].
- D. Although other individuals will be involved in designating the trees to be removed and cutting the marked trees, Dr. Fields is responsible for certifying the completion of the job, accepting payment from the Program, and paying the tree cutter. There is not a conflict with Dr. Fields' official assignment. The Federal Timber Stand Improvement Program is available to anyone; therefore, Dr. Fields' financial benefit from participation in the program is not linked to his/her official position with the USDA, even though the program is administered by an agency of the USDA [2635.702, 26335.802].
- E. Official demonstration plots should not be established on property owned by Dr. Fields to avoid creating an appearance of private gain from the official assignment [2635.702]. However, if the plant species are readily available to the general public, Dr. Fields could, as a private citizen, establish those plants on the farm and discuss the desirable attributes of those plants with visitors to the farm. However, Dr. Fields must not use information or materials acquired through his/her official position prior to its release to the general public [2635.703] and must not imply USDA endorsement of the product or procedures [2635.702].

Case 5: Dr. O'Vine–Sheep Producer

Dr. O'Vine, an ARS Veterinary Toxicologist, owns a 500 acre farm on rolling land near the research facility. The farm supports a flock of 275 sheep.

- A. Dr. O'Vine wants to sell sheep at the local livestock market, and rent 100 acres of adjacent farm land for supplemental pasture.
- B. As an outside activity, Dr. O'Vine wants to attend the annual State Sheep Producers' Conference and talk about the production of lean lamb.
- C. Dr. O'Vine wants to enter a ram and a pen of three ewes into competition at the State Fair. The Suffolk ram will be shown in the Breeder Ram Division of the Livestock Show.
- D. Dr. O'Vine wants to establish a small veterinary practice to provide "local" veterinary services for the few sheep producers in the county. Services will be available evenings and weekends only.
- E. Dr. O'Vine wants to accept a 10% discount on veterinary supplies purchased from Sheepman's Supply Company for farm use.
- F. Dr. O'Vine wants to contribute a photograph of the farm's prize ram to **Country** magazine for consideration for the "Farm Animals" picture section. Contributors of published pictures will receive a "Country" tee-shirt.

Case 5 Analysis: Dr. O'Vine--Sheep Producer

- A. Although Dr. O'Vine is personally involved in the production and marketing of the livestock, he/she may sell sheep at the local market and lease pasture as long as no business dealings are conducted with prohibited sources [2635.802, 2635.203(d)].
- B. Dr. O'Vine may attend the State Producers' Conference and discuss the approaches used and the success achieved in his/her efforts, as an outside activity, to produce lean lamb. Dr. O'Vine must not allow his/her affiliation with the Agency to be mentioned and may not refer to accomplishments associated with his/her research program unless they have already been made available to the general public. If the subject of the talk is linked closely to Dr. O'Vine's research, the activity could be made a part of Dr. O'Vine's official assignment. [5 C.F.R. 735.206, 2635.702, 2635.807]
- C. The livestock shows and pen-group competitions at the State Fair are contests which are open to all producers in the state; therefore, Dr. O'Vine may enter sheep from his/her flock and accept prize money that may be awarded. [2635.203]
- D. Since the proposed outside employment involves use of knowledge characteristic of the profession and not knowledge secured as the result of employment by the Agency, Dr. O'Vine may establish the practice. [2635.702, 2635.802]
- E. If Sheepman's Supply Company offers the same discount to other sheep producers who purchase veterinary supplies, Dr. O'Vine may accept the discounts [2635.203]. On the other hand, if the discount is offered solely to Dr. O'Vine because the company seeks to do business with the Agency, then the discount could be considered a gift in return for being influenced in the performance of official acts [18 U.S.C. 201(b), 201(c), ARS P&P 461.3].
- F. The tee-shirt given by the magazine may be considered a prize given to competitors in an event open to the public [2635.203] or a payment for a creative work. Therefore, Dr. O'Vine may keep a "**Country**" tee-shirt, if it is offered.

Case 6: Dr. Gross--MADD Leader

Dr. Gross, an ARS Economist, lost a child in an automobile accident involving an intoxicated driver. She is now very active in the local chapter of Mothers Against Drunk Drivers.

- A. Dr. Gross wants to make public service announcements discouraging alcohol consumption to be aired during the Christmas-New Year holiday season by local radio and TV stations.
- B. Dr. Gross wants to represent the local chapter at the National MADD Convention. The chapter will reimburse her for airfare, hotel, and meal costs.
- C. Dr. Gross wants to accept an honorarium of \$125 from the School Board for talking to students in the county's five junior-high schools about the consequences of alcohol consumption.
- D. Dr. Gross wants to chair the committee for an alcohol-free graduation party MADD members have voted to sponsor. Coordination activities include solicitation of community businesses for financial donations and door prizes.
- E. Dr. Gross wants to accept a five-foot tall potted fig tree given by the high school graduation class in appreciation for the all-night, alcohol-free graduation party she organized.

Case 6 Analysis: Dr. Gross--MADD Leader

- A. Dr. Gross may make public service announcements for the nonbusiness, nonprofit organization. However, she must not use her official title or position in these announcements to avoid creating the appearance of Government endorsement of MADD and its activities. [2635.702, 2635.802]

Management could determine that the activity is related to the Agency "Just Say No" effort and permit Dr. Gross to make the announcements as a part of her official duties, in which case her official position, but not her affiliation with MADD, could be mentioned in the spot announcements [2635.702].

- B. MADD is not a prohibited source and the offer to pay expenses associated with voluntary representation of the chapter at the National Convention was not extended because of her official position; therefore, Dr. Gross may accept the gift of meals, lodging, transportation, and other benefits. [Secretary's Announcement 6/20/92, 2635.204(e)(2)]
- C. Dr. Gross may accept the honorarium, if the speech is neither related to her official work nor prepared on Government time using Government resources. However, if the speeches were delivered on official time, Dr. Gross would be prohibited from accepting a supplementation of her salary from the school board. [18 U.S.C. 209]
- D. Dr. Gross may participate in the fundraising effort in a personal capacity provided that she does not solicit funds or support from a subordinate or a prohibited source or use her official title or position to further the fundraising effort. [2635.704, 2635.705, 2635.801, 2635.808]
- E. The graduation class is not a prohibited source and the gift was not solicited by Dr. Gross or given because of her official position. Thus, Dr. Gross may accept the tree, even though its market value is greater than \$20. [2635.201, 2635.204(c)(2)]

Case 7: Dr. Halogen--Instrument Acquisition and Application

Dr. Halogen, an analytical chemist conducts research concerning food flavor enhancement by artificial, organic additives at the Agency's Food Quality Research Laboratory.

- A. Dr. Halogen plans to purchase a new mass spectrometer. Because of special installation requirements, an in-lab demonstration by the manufacturer is not possible. Dr. Halogen wants to accompany the salesman to Beaker Analytical Labs, one of the manufacturer's customers located about 50 miles away, to see the instrument there. Dr. Beaker has agreed to allow Dr. Halogen to analyze some samples from the Agency research program.
- B. The mass spectrometer at Beaker Analytical Labs, the only environmental services laboratory in the area, has just malfunctioned with three samples remaining to be analyzed. Dr. Halogen, who sought advice about the instrument from Dr. Beaker on several occasions prior to purchasing an identical instrument for the Agency research program, wants to allow the professional associate to analyze the unstable, environmental samples at the Agency lab this evening.
- C. Dr. Halogen wants to accept an invitation from the manufacturer of the lab's mass spectrometer to give a 30-minute seminar on a procedure that was developed at the Agency lab. The presentation will be made at an applications workshop sponsored by the manufacturer.
- D. Dr. Halogen, who has resigned from the Agency to open an analytical services lab in the community, wants to combine data obtained after leaving the Agency with unpublished data from his/her Government project for a paper on a new analytical procedure to be presented at the Pittsburgh Conference. Work on the Agency project was discontinued after Dr. Halogen resigned.

Case 7: Dr. Halogen– Continued

- E. While on a three-month assignment in the chemistry department at the State Institute of Technology, Dr. Halogen wants to participate, with the Department faculty, in a one-day mass spectrometer training course conducted by the manufacturer of the department's newly acquired instrument. The session will conclude with a wine and cheese social provided by the instrument manufacturer at a local hotel.

- F. Dr. Halogen has received a letter from a marketing firm containing a questionnaire about high performance liquid chromatographic (HPLC) equipment and Agency budget allocations for purchase of such equipment. Dr. Halogen wants to respond to the questionnaire to let HPLC manufacturers know what features he/she feels are important and wants guidance concerning the \$2 bill enclosed by the solicitor to encourage return of the completed questionnaire.

Case 7 Analysis: Dr. Halogen--Instrument Acquisition and Application

- A. The instrument manufacturer is a prohibited source; therefore, Dr. Halogen may not accept travel from the salesman [31 U.S.C. 1353, Secretary's Announcement 6/30/92]. Free analyses of Government samples is a gift from Beaker Analytical Labs to the Agency, not Dr. Halogen personally. The gift may be accepted by the Agency under its various gift acceptance authorities or the Agency may reimburse Beaker Analytical Labs for the analyses, particularly if acceptance of the gift would convey an appearance of a loss of impartiality [2635.203(b)(8), 2635.501, 2635.502].
- B. Allowing Dr. Beaker to perform the commercial analyses on Government-owned equipment would violate 2635.704 (Use of Government Property Standard), contribute to the private gain of Beaker Analytical Labs [2635.702], and create an appearance of loss of impartiality [2635.501]. The agency designee, however, may determine that the interest of the Government outweighs the concern that a reasonable person may question the integrity of agency programs and operations and authorize the analyses [2635.501, 2635.502(d)].
- C. The presentation deals with public information that is apparently linked to Dr. Halogen's current or very recent research; therefore, the activity is related to Dr. Halogen's official duties [2635.807(a)(2)(i)(E)(1)]. The workshop is sponsored by a prohibited source, so Dr. Halogen's speech would constitute a promotional pitch and convey Government endorsement of the manufacturer's product [2635.501, 2635.702]. Dr. Halogen must decline the invitation.
- D. The nonpublic information generated during the course of employment with the Agency cannot be used to further the interests of a former employee. Because publication of the combined information may be of interest to both organizations, Dr. Halogen could publish the article according to Agency guidelines, supplying the Agency location address as the author's address and footnoting his/her new employment address. [2635.501, 2635.502, 2635.702, 2635.703, 2635.704, 2635.807]

Case 7 Analysis: Dr. Halogen– Continued

- E. Assuming the training is being provided by the manufacturer as a component of the purchase agreement to facilitate the use of the instrument, it is a gift from the university to the Agency. If the school is not a prohibited source, the Agency may accept the training associated with Dr. Halogen's official duties at the university [2635.203(a)(8)(i), 31 U.S.C. 1353].

The refreshments are a gift to Dr. Halogen from the manufacturer, a prohibited source. Under authority of the exceptions to the standard concerning acceptance of gifts from outside sources, Dr. Halogen may accept refreshments having a market value of \$20 or less [2635.204] and consume the wine which will be served on non-Government property [USDA Bulletin 735-1(d)].

- F. The invitation and compensation were extended to Dr. Halogen by a source that has interests that may be affected substantially by his/her performance or nonperformance of official duties. Because such inquiries are conducted on behalf of specific, though often unidentified companies, participation by Dr. Halogen on official time would give preferential treatment to, and promote the private gain of, those companies and would, therefore, constitute misuse of Government records and time. The Exception to the Standards for acceptance of gifts from a prohibited source does not apply to gifts of cash. Responding to the survey and accepting the compensation as an outside activity would be prohibited because the actions conflict with Dr. Halogen's official duties. [2635.204, 2635.501, 2635.502, 2635.702, 2635.704, 2635.705, 2635.902]

Case 8: Dr. Hill--Privately-Owned Business

Dr. Hill, an Agency Research Agronomist, and Ms. Dale have decided to live together. Ms. Dale and her son, John Dale, own and operate Community Farm Equipment Company.

- A. Dr. Hill wants the Agency to purchase a set of cutting disks for the lab's drum mower from the Community Farm Equipment Company.
- B. Dr. Hill wants to hold workshops at Community Farm Equipment Company on Saturdays during the month of March to advise local farmers about the latest techniques for forage preservation.
- C. Mr. Hill wants to encourage the Soil Conservation Service to purchase a Tye Seeder from Community Farm Equipment Company. The seeder will be rented to farmers in the county on a daily basis for the no-till seeding of corn.
- D. Dr. Hill is in the process of establishing research plots on property leased by the Agency. The owner does not want the truck-load of rocks removed from the plot area to be deposited elsewhere on the property. Dr. Hill wants to dump the rocks in the drainage ditch behind the warehouse at Community Farm Equipment Company.

Case 8 Analysis: Dr. Hill--Privately-Owned Business

- A. As Dr. Hill and Ms. Dale are members of the same household, the financial interests of Community Farm Equipment Company are also the financial interests of Dr. Hill. Dr. Hill is, therefore, prohibited from participating in an official capacity in activities which will have a direct and predictable effect on the company. It should be noted that an intimate relationship could create the appearance of a conflict which also would violate the standards of conduct. [2635.501, 2635.502(a) & (b)(1)(ii), 2635.402]

- B. Because of Dr. Hill's affiliation with the Agency, the workshops at a farm equipment company may be construed by the public to be an official activity, even though Dr. Hill's title or position are not advertised. If so, Dr. Hill's presence also could be interpreted as Government endorsement of the merchandise offered by the equipment company and the equipment company itself. For these reasons, Dr. Hill must not conduct the workshops at Community Farm Equipment Company. Dr. Hill could conduct the workshops at the community center if information presented has already been made available to the general public. [2635.501, 2635.502, 2635.702, 2635.703]

- C. As an employee of the Agency, Dr. Hill is prohibited by 18 U.S.C. 205 from representing Community Farm Equipment Company before any agency within the Department of Agriculture in matters in which the United States has a direct and substantial interest.

- D. Dr. Hill must not dispose of the rocks on Community Farm Equipment property. To do so would create the appearance of using public office and property for private gain or of giving preferential treatment to Community Farm Equipment Company. [2635.501, 2635.502, 2635.702, 2635.704]

Case 9: Dr. Bugg–Genetic Engineering Expert

Dr. Bugg, a highly respected Agency Microbiologist, has used techniques of molecular biology to develop strains of beneficial soil microorganisms that are more tolerant of herbicides. Prior to joining the Agency, Dr. Bugg was employed as a research technician in the human genetics department at State University.

- A. Dr. Bugg wants to accept an invitation to be interviewed by a staff writer for **U.S. News and World Report**. While the focus of the interview will be the benefits of Dr. Bugg's research to U.S. agriculture, it is probable that Dr. Bugg will be asked to comment on the "ethics" of the release of genetically engineered organisms and the appropriateness of controls imposed on medical researchers by NIH.
- B. Dr. Bugg has been asked to serve as an environmental consultant to a state government advisory board that will establish policies concerning herbicide use in agriculture. Dr. Bugg wants to establish a contract for one year. Annual leave will be used for any meeting held during official working hours.
- C. Dr. Bugg has been subpoenaed to provide publications and research notebooks to be used in a case against an herbicide manufacturer. The manufacturer is being sued for killing fish in streams fed by watersheds where the herbicide has been used. Dr. Bugg does not want to make public the latest results of the research effort until after the paper on the subject is published.
- D. Dr. Bugg wants to be an expert witness for a paternity case in which DNA fingerprinting is to be introduced as evidence.
- E. A publisher has invited Dr. Bugg to write a book about the impact of soil microorganisms on forage crop production. Dr. Bugg wants to undertake the project as an outside activity and accept compensation for the product.

Case 9 Analysis: Dr. Bugg--Genetic Engineering Expert

- A. Agency personnel are encouraged to respond willingly to requests from the media to discuss their research and the constructive contributions this science makes to U.S. agriculture. The Agency Information Staff should be alerted to inquiries from major national newspapers and magazines, particularly when the topic is related to sensitive issues on the policies of other Government agencies. Dr. Bugg should factually discuss his/her research without speculative extrapolation to larger and sensitive controversies. Questions that are directed to eliciting personal opinions about major policy issues should be tactfully referred to the agency or policy official who has responsibility for that area of work. [ARS P&P 150.1]
- B. Dr. Bugg should not enter into the consulting arrangement because the work will draw upon experience, competence, and professional standing acquired or enhanced by or through his/her Agency position, and actions taken could conflict with his/her official duties. [2635.502, 2635.802]
- C. Dr. Bugg must immediately contact the Agency Ethics Advisor. If compliance with the subpoena is determined not to be in the best interests of the Agency, Dr. Bugg will be provided with a letter advising him/her to respectfully decline to provide material that is requested [7 C.F.R. Part 1, 1.214c]. Production of other records involved must be handled in accordance with Freedom of Information Act procedures. [2635.805, 7 C.F.R. Part 1]
- D. If Dr. Bugg's testimony would not arise out of, or relate to, his/her employment with USDA, then it should be treated as an outside activity. On the other hand, if management found (and the Administrator concurred) that Dr. Bugg's testimony was related to his/her official work and was of benefit to the Department, he/she could testify. [2635.805, OPM Regulation 5 C.F.R. Part 735.203]
- E. Because the book does not focus specifically on research Dr. Bugg conducts for the Agency, he/she may write the book on personal time and accept compensation. The book can address the contributions of molecular biology and contain examples derived from Dr. Bugg's Agency research, if that information has already been made available to the public. Official time and Government equipment, supplies, and office assistance must not be used. Prepared material must be cleared by the National Program Leader, Information Staff, and the Office of Public Affairs. The material can be copyrighted, and Dr. Bugg can receive royalties. [2635.702, 2635.703, 2635.704, 2635.705, 2635.806, 18 U.S.C. 209, 2626.203, ARS P&P 150.1].

Case 10: Dr. Locke--Foreign Sabbatical

An Agency Biochemist, Dr. Locke, has been approved to spend six months at the University of Leon in Spain to collaborate with Dr. Key on the characterization of the active site of a newly described enzyme. Dr. Locke's spouse, Professor Pérez, has been awarded a one-year Faculty Development Grant to support her studies in Spain. The grant is from the State University where Professor Pérez is employed in the Spanish Department.

- A. Because his research funds are limited, Dr. Locke wants the timing of his trip to coincide with that of his wife's study leave so that he can share her accommodations and not charge lodging costs to his research budget.
- B. While on sabbatical in Spain, Dr. Locke wants to use his computer expertise to develop an automated billing procedure for the hotel where he is residing. Dr. Locke and the hotel manager will work together during the evenings when both of them have completed their official responsibilities.
- C. Dr. Locke wants to accompany Dr. Key to Portugal to collect plants from which to extract the enzyme of interest. Travel expenses will be covered by Dr. Key's research grant from the Spanish Ministry of Science.
- D. While in Spain, Dr. Locke presented seminars at two Spanish Government Research Stations. The Director of one Station treated Dr. Locke to dinner after the presentation. The Director of the other location presented him with a small oil painting of that Station. Dr. Locke wants to keep the painting as a memento of his trip.

Case 10 Analysis: Dr. Locke--Foreign Sabbatical

- A. A Government employee may accept meals, lodgings, transportation and other benefits resulting from the employment activities of the employee's spouse when it is clear that such benefits have not been offered because of the employee's official position [2635.204(e)]. In this case, accommodations constitute a gift to the Agency from the university. There is no evidence that the university is a prohibited source and the gift is not given because of Dr. Locke's official position. While normal and reasonable travel expenses, not in excess of those to which an employee would be entitled if traveling at the expense of the Department, may be accepted from non-Federal sources by Departmental agencies in connection with the performance of official duties as long as the sources are not prohibited sources and the Agency Administrator determines, in advance, that acceptance creates neither an actual nor an apparent conflict of interest [2635.202, 2635.203, Secretary's Announcement 6/30/92, Foreign Gifts and Decorations Act].
- B. Based on USDA prohibitions, Dr. Locke may not accept outside employment while serving abroad. USDA Bulletin 735-1 Section 207(e) prohibits outside employment in any country to which the employee is assigned. Also, Federal employees, regardless of duty station location, are prohibited from accepting employment from a foreign government or the political subdivision of a foreign government, including a public university or commercial enterprise owned and operated by a foreign government. [2635.802, Emoluments Clause to the Constitution of the United States]
- C. The Agency may accept payment, or authorize Dr. Locke to accept the gift on the Agency's behalf, from the foreign source for travel, subsistence, and related expenses associated with the official plant collection trip if the Spanish Ministry of Science is not a prohibited source and the Agency Administrator determines, in advance, that acceptance creates neither an actual nor an apparent conflict of interest. [2635.230(b)(8)(I), 31 U.S.C. 1353, Secretary's Announcement 6/30/92, Foreign Gifts and Decorations Act]
- D. The painting was presented by a representative of the Spanish Government in appreciation for the seminar which was delivered as part of Dr. Locke's official duties. Under authority of the Foreign Gifts and Decorations Act [5 U.S.C. 7342], Dr. Locke may accept and retain the gift as a souvenir if it has a retail value in the United States of \$245 or less at the time of acceptance. If the painting is valued at more than \$245 and refusal would cause offense or embarrassment, Dr. Locke could accept it on behalf of the United States and dispose of it in accordance with 41 C.F.R. 101-49. [2635.204, 2635.205, USDA Bulletin 735-1(202d), ARS P&P 468.4]

Acceptance of the meal by Dr. Locke was not appropriate because it was given by a foreign government and the information presented does not suggest that the purpose of the dinner was to discuss official business with other non-U.S. citizens or representatives of other foreign entities. [5. U.S.C. 7342(a)(2), 2635.204]

Case 11: Dr. Starr--Award Recipient

Dr. Starr, a renowned Agency plant physiologist, has conducted "leading-edge" research since completing the Ph.D. degree nine years ago.

- A. Dr. Starr wants to submit a paper in the annual "Best Paper" competition sponsored by the State Academy of Science. The \$500 cash prize will be awarded to the Academy member whose manuscript is selected by the Academy Awards Committee which reviews each entry for scientific merit. Members may receive the award only once. Membership dues from students, scientific professionals, and a few corporate members are the source of the prize money.
- B. Dr. Starr wants to nominate a fellow Agency scientist for a prestigious award given by the Crop Science Society of America. The nomination procedure involves completing a comprehensive six-page nomination form that includes a one-page essay about the nominee's major research accomplishments and their benefit to science and society.
- C. Dr. Starr wants to accept a check for \$5,000 presented by the American Society of Plant Physiologists (Society). The award, as described in the Membership Directory, is presented each year at the Annual Meeting to a member under the age of 40 who has made a significant contribution to plant science. The winner is invited (expected) to be the speaker for the Awards Banquet the following year. Travel and banquet costs for the subsequent meeting will be paid by the Society. Selection of the winner is made by the Executive Committee, based upon recommendations of the Awards Committee which reviews nomination documents submitted by members of the Society. Award money is derived from interest on the Society's investment of resources derived from subscriptions to its journal ***Plant Physiology***.
- D. The Executive Committee of the Scandinavian Society of Plant Physiologists has voted to present Dr. Starr with a special award, an engraved plaque, for pioneering research in the area of plant growth regulation. The award will be presented at the Society's Annual Meeting in Stockholm. Dr. Starr wants to accept the airline ticket to Stockholm provided by the Society.

Case 11 Analysis: Dr. Starr--Award Recipient

- A. The competition is an established program, open to all members of the Academy, and selection of the winner is made on the basis of scientific merit as judged by a group of peers. The information provided (only members compete, members win only once) suggests that there are written guidelines about how the award is administered. These aspects support acceptance of the award; however, corporate membership dues are used to help fund the award. More information about who designates the awards committee and who serves on that committee is necessary before a determination regarding acceptance of the money can be made. The selection process must be independent of any input from interested parties. Because the majority of members of the Academy are not prohibited sources, Dr. Starr could accept non-monetary components of the award such as a certificate, plaque, or trophy having a aggregate market value of \$200 or less [2635.204]. Dr. Starr must follow standard procedures for obtaining Agency approval to submit the manuscript.
- B. This case assumes that conditions permit the Agency scientist to be nominated and accept the award. The nomination may be prepared on official time, if Dr. Starr is the supervisor or manager of the nominee (ARS P&P 468.5) or if Dr. Starr's personal knowledge of the nominee was acquired during the course of Federal Employment (2635.702). Otherwise, because submission is an activity linked to a professional association, management can permit the preparation of the nomination on official time. The Agency's policy is to facilitate recognition of professional achievement of its employees. Such recognition provides employees with incentives to achieve further excellence in job performance and increases public confidence in the Agency's abilities to effectively carry out its programs [ARS Circular 94-1]. The Office of Government Ethics has reserved the section on participating in professional associations in the Standards of Ethical Conduct; therefore, as a member of the Society, Dr. Starr could prepare and submit the nomination on personal time. In this case, official stationary, postage and equipment should not be used, and Dr. Starr may not sign the nomination form using his/her official title, but may refer to his/her official position in the body of the nomination.

Case 11 Analysis: Dr. Starr- Continued

- C. This award is presented by an independent, voluntary, scientific professional organization; the money is not from a prohibited source; a majority of the members of the group are not prohibited sources; the award is made annually through a funding mechanism that ensures continuation of the award program; there are written guidelines; any member can submit a nomination or be nominated (if under the age of 40); and the selection process is a two-tier system. Unless the nominator or members of the Awards or Executive Committees are prohibited sources, Dr. Starr can accept the monetary award [2635.204(d)]. As an incident of the award (if it can be accepted), the transportation and meal can also be accepted [2635.204(d), Example 3]. Dr. Starr would be prohibited from accepting the transportation and meal if prohibited sources were involved in the award nomination and selection processes. If the speaking invitation were treated separately, other regulations apply. Federal employees are not permitted to receive compensation (transportation and meals) for speaking that relates to their official duties [2635.807(a)] or accept travel expenses provided by a prohibited source with whom the Agency does not have a cooperative agreement [Secretary's Announcement, 6/30/93]. Normal and reasonable travel expenses, not in excess of those to which an employee would be entitled if traveling at the expense of the Government, may be accepted from non-Federal sources, such as professional societies, by the Agency in connection with an employee's performance of official duties (attendance at conferences, seminars, speaking engagements, training courses, and similar events) as long as the sources are not prohibited sources and the Administrator has determined, in advance, that acceptance of such expenses creates neither an actual nor apparent conflict of interest or that it is in the interest of the Government to accept the expenses [Secretary's Announcement, 6/30/92, 31 U.S.C. 1353, GSA Rule 4 (57 CFR 53283), 41 CFR 304-1.4, and Financial Management Bulletin 96-4].
- D. The award, itself, is not a monetary one, and the Society and a majority of members of the professional society are not prohibited sources. If the market value of the plaque is under \$245 and interested parties were not involved in his/her nomination and selection, Dr. Starr may accept the plaque from the foreign professional organization under provisions of the Foreign Gift and Decorations Act. Under authority of 31 U.S.C. section 1353, implemented under 41 C.F.R. part 304-1, agencies may accept in-kind travel-related payment (ticket) from a foreign professional organization when the travel is connected with an employee's attendance at a meeting, away from the duty station, which the employee has been authorized to attend in an official capacity on behalf of the Agency. However, an Agency scientist may accept travel only if the donor is a cooperating organization or the donor is not a prohibited source and acceptance creates neither an actual nor an apparent conflict of interest, management determines that the subject of the meeting is of benefit to carrying out the Agency's research program, and approval is granted in advance by the Administrator of the Agency. If approval is granted by the Administrator, Dr. Starr may accept the ticket.

Case 12: Dr. Sands--Save-the-Earth Campaign

Trained as a physiological ecologist, Dr. Sands is employed by the Agency to study the impact of agricultural and industrial wastes on earthworm behavior.

- A. Dr. Sands wants to appear as a guest on the public TV program "A Chat With", a weekly feature in which a community personality is interviewed by a staff member of the local station. The topic of the discussion will be the construction of a hazardous waste landfill which Dr. Sands opposes.
- B. Dr. Sands, who has been a member of the Southern Association of Soil Conservation Districts for three years, wants to chair the Membership Committee for the coming year.
- C. Dr. Sands requests approval to teach a one-semester evening course on soil ecology at the local Community College.
- D. Impressed by the involvement of members of the Lyons Club in roadway clean-up projects and the Club's anti-litter campaign, Dr. Sands wants to become a member of the group.
- E. Dr. Sands wants to write periodic letters to the editor of the local newspaper to express personal opinions on Government management of environmental issues.

Case 12 Analysis: Dr. Sands--Save-the-Earth Campaign

- A. The program is not a commercially-sponsored broadcast, but the nature of the program and the subject to be discussed suggest that Dr. Sands was invited to be a guest on the show not to discuss his/her research and the constructive contributions this science makes to U.S. agriculture, but because of his/her area of expertise, and personal opinion on the subject. However, if Dr. Sands was invited as a guest on the public television program because of his/her position in the Government, it may not be in the interest of the Agency for Dr. Sands to accept [2635.702, 2635.802, ARS P&P 150.1].
- B. Dr. Sands must not participate actively in meetings or other activities concerned with the establishment of general or specialized farm organizations, hold a functional office within such organizations, or recruit members for such organizations. This includes chairing and/or serving on the membership committee. [USDA Bulletin 735-1(206)].
- C. The subject is within Dr. Sands discipline, based on educational background and experience; there is not a conflict with the official assignment; and the content of the course is not dependent on nonpublic information obtained by Dr. Sands while conducting research for the Agency. The invitation to teach the course was based on Dr. Sands' expertise, not because of Dr. Sand's official position, and the Community College does not have interests that may be affected by Dr. Sands' performance or nonperformance of official duties. The course is part of the regularly established curriculum of an established institution of higher education [20 U.S.C. 1141(a)] and involves multiple presentations by Dr. Sands; therefore, Dr. Sands may accept compensation for teaching the course. Dr. Sands must not use or permit the use of his/her official title or position in connection with the course. [2625.703, 2635.705, 2635.802, 2635.807, 2626.203]
- D. Membership in and volunteer work with civic, public service, and charitable organizations poses no conflict-of-interest problem. However, Dr. Sands is prohibited from conducting fundraising activities on behalf of the Lyons Club on Government time and in Government owned or leased workspace. [2635.808, OPM regulation 5 CFR 950]
- E. "Nonofficial" information material prepared for publication must be approved by the Agency Information Staff and cleared by the Office of Public Affairs if the material interprets policies of USDA, deals with sensitive areas of programs or needs clearance with other Departments or Agencies. [ARS P&P 150.1, 2635.203, 2635.807]

Case 13: Dr. Socs--Professional Associations

Dr. Socs is an active member of several professional organizations and is frequently asked by these groups to provide service and leadership.

- A. Dr. Socs wants to be a candidate for the office of Secretary of the American Society of Microbiology and serve in that position, if elected.
- B. Dr. Socs has been elected to serve as treasurer of the Plant Growth Regulator Society of America (Society). To offset costs of transportation to the spring Executive Committee Meeting at Society headquarters, Dr. Socs wants to accept the \$500 the Society will contribute towards the travel expenses of each officer.
- C. Dr. Socs wants to serve a three-year term as a member of the editorial board of the **Journal of Animal Science**. In this position, Dr. Socs will be required to provide technical reviews of 12-15 manuscripts per year, and after considering the evaluations of one or two other reviewers for each paper, make decisions to publish or reject each of these manuscripts.
- D. As a member of the Program Committee for the American Association for the Advancement of Science, Dr. Socs wants to organize a symposium related to his/her research for the annual meeting. Responsibilities include securing speakers and editing the *Proceedings* of the symposium which will be published, with a three-page overview by Dr. Socs, in a special issue of **Science**.
- E. Dr. Socs wants to serve as a member of the Judging Committee that will determine winners of the Graduate Student Paper Competition at the annual meeting of the Phytochemical Society of America. The awards, a framed certificate and a travel grant for each of three winners, are funded from corporate donations.

Case 13 Analysis: Dr. Socs--Professional Associations

- A. Agency scientists are encouraged to participate in the activities of professional associations, and they may serve as officers of such organizations. As Secretary of the American Society of Microbiology (Society), Dr. Socs may not use official time to administer affairs of the association or to attend or participate in meetings held primarily to conduct business of the association, and Dr. Socs must not use his/her official position or title for the private gain of the professional organization. However, there is no prohibition against Dr. Socs' participating in Society business activities that are a minor component of a scientific meeting Dr. Socs has been authorized to attend, based on his/her official duties and interests of ARS [Administrator's Memo, 9/19/91; 2635.702; 2635.705].
- B. Because the primary objective of the Executive Committee meeting is to conduct business of the Society, Dr. Socs may not attend the meeting on official time, and the travel funds cannot be accepted by the Department [2635.705, 31 U.S.C. 1353, Secretary's Announcement 6/30/92]. The Society is not a prohibited source, the majority of the Society's members are not prohibited sources, and the travel compensation is not offered or enhanced because of Dr. Socs' official position; therefore, Dr. Socs may accept a gift of meals, lodgings, and transportation from the Society [2635.204(e)(2)] or he/she may accept the money as compensation for services rendered.
- C. While the subject of the manuscripts to be reviewed may be related to Dr. Socs area of research, it could be argued that the benefits derived by the Agency are not sufficient to justify the use of official time for this purpose. If such were the decision of management, Dr. Socs could perform these services as an outside activity [2635.801]. If review of the manuscripts were made a part of Dr. Socs' official duties, he/she could not accept any compensation from the journal [18 U.S.C. 209, 2635.806]. In either case, Dr. Socs should adhere to the ARS Code of Scientific Ethics [P&P 129.0] to ensure that actions taken will not reflect discredit on the Government.

Case 13 Analysis: Dr. Socs- Continued

- D. Whether Dr. Socs organizes the symposium, edits the proceedings, and writes the overview on official time is a management decision based on the relationship between these activities and the scientist's official duties and the interests of the agency. If the activity is made a part of Dr. Socs' official duties, he/she must obtain Agency approval of the manuscript before submitting the overview for publication and may not accept payment for the overview [18 U.S.C. 209]. If Dr. Socs' conducts the work as an outside activity, preparation and publication of the "nonofficial" information material must be approved by the Agency Information Staff and must be cleared by the National Program Leader for technical accuracy, the Information Staff for policy review and assurance that information detrimental to the Agency is not contained, and the office of Public Affairs for review if the material interprets policies of USDA, deals with sensitive areas of programs or needs clearance with other Departments or Agencies that are referenced. Disclaimer statements must be included or names of commercial products must not be mentioned [ARS P&P 150.1, 2635.702].
- E. If Dr. Socs has been given approval to attend the annual meeting as a component of official duties and Competition Papers are part of the overall meeting program, then he/she may conduct the judging assignment on official time [Administrator's Memo, 9/19/91; 2635.705]. Actions taken must conform to the USDA, ARS Code of Scientific Ethics [P&P 129.0].

Case 14: Dr. Dean--University Relations

Dr. Dean, one of only a few seed physiologists in the country, maintains active communication with peers at land-grant universities. Dr. Dean is stationed at the Agency Plant Introduction Station on the Iowa State University campus in Ames. To increase seed resources of popular accessions, Dr. Dean has Research Support Agreements with Cornell University, Iowa State University, and Washington State University.

- A. Louisiana State University has asked Dr. Dean to provide a professional assessment of its seed physiologist. Dr. Dean wants to submit the "peer evaluation" which will be used by the LSU Promotions Committee during deliberations concerning tenure.
- B. Dr. Dean wants to serve on a CSRS Review Panel that will evaluate the Plant Physiology Department at Cornell.
- C. Dr. Dean wants to accept appointment as an Adjunct Professor in the Department of Agronomy at Iowa State University. This courtesy position will allow Dr. Dean to direct the research efforts of graduate students and receive faculty discounts at the University Bookstore.
- D. Dr. Dean wants to review a research proposal, *Breaking of Dormancy in Weed Seeds*, that was submitted by a scientist at Washington State University for funding consideration under the USDA Competitive Grants Initiative.
- E. Dr. Dean, whose office and laboratory are located in the Iowa State University Department of Agronomy building, has been asked to serve on the Agronomy Department Facilities Committee. The committee makes decisions concerning departmental space utilization and equipment purchases for departmental service labs such as the Soils Testing Lab and the student training labs.
- F. Dr. Dean's Iowa State University collaborator plans to drive a University vehicle to the annual meeting of the American Society of Agronomy. Dr. Dean wants to travel to the meeting with the collaborator.

Case 14 Analysis: Dr. Dean--University Relations

- A. Only if Dr. Dean has knowledge of the ability of the LSU faculty member, based upon personal interactions during the course of Federal employment, can Dr. Dean prepare the peer evaluation in an official capacity [2635.702]. Because the Agency encourages its scientists to participate in professional associations and authorizes them to attend meetings of professional associations on official time when the program relates to the performance of official duties and participation is in the interest of the agency, Dr. Dean has probably interacted extensively with university colleagues, including the LSU seed physiologist, in an official capacity.
- B. The University is a prohibited source because it has a cooperative agreement with the Agency, therefore, Dr. Dean may not serve on the panel in either his/her official capacity or as an outside activity because to do so would convey the appearance of loss of impartiality [2635.502].
- C. Subject to conflict-of-interest and prohibited activity provisions, the Agency has routinely allowed its scientists to accept appointments as Adjunct Professors at universities because such appointments enhance the Agency's cooperative role with research programs and give the scientists an environment outside the Federal sector which further enhances growth and development. Approval for Dr. Dean to serve on specific graduate students' advisory committees on official time is a management decision, based upon the needs of the Agency. Although Dr. Dean will not have a financial interest in the University, the University is a prohibited source. Dr. Dean may not receive the faculty discount at the University Bookstore because it is not a benefit available to the public or to all Government employees [2635.203, 2635.702].
- D. With the approval of management, Dr. Dean may review external grant proposals as a component of official duties. Because Dr. Dean has a Research Support Agreement with Washington State University, the University is a prohibited source with whom Dr. Dean has a covered relationship [2635.502]. Dr. Dean should disqualify himself/herself from review of proposals submitted from schools with which his/her unit has a cooperative agreement. Alternatively, if Dr. Dean's role is to provide a technical review and an assessment of the proposal's merit, to a decision-making panel which considers reviews from several sources and awards grants accordingly, then the two-tier process could remove an actual or appearance of loss of impartiality, and Dr. Dean could perform the requested review.
- E. Because the Agency occupies space in a university building on campus, it may in the interest of the Agency for Dr. Dean to serve on the Departmental Facilities Committee. However, if management grants approval, Dr. Dean should follow Federal ethics regulations and conflict-of-interest statutes when participating in procurement actions [5 C.F.R. Part 2635, 18 U.S.C. 202-209, 216].

Case 14 Analysis: Dr. Dean- Continued

- F. An Agency employee may not accept travel from a prohibited source whether or not that travel is in connection with official duty. An exception is made for travel accomplished in accordance with a cooperative agreement. If Dr. Dean and his/her university collaborator are attending the meeting to report on research conducted under a joint cooperative agreement, Dr. Dean may accept transportation with the collaborator. If a joint cooperative agreement does not exist, Dr. Dean may travel with the collaborator if his/her travel expenses are secured by the Government under Government contract [Secretary's Announcement 6/30/92, 2635.202, 2635.203].

Case 15: Dr. Pulley--Engineering Success

An Agency Agricultural Engineer, Dr. Pulley has designed numerous equipment items that facilitate or improve the production, harvest, processing, and marketing of coffee beans. Dr. Pulley's latest research efforts have resulted in designs for a coffee-berry curer which prevents the development of the bitter taste in coffee beans and a coffee-berry harvester that "plucks" berries from the Brasilia variety which does not release its berries readily.

- A. The Agency patented Dr. Pulley's coffee-berry curer and granted an exclusive license to the Coffee Harvest Equipment Company to commercialize the curer. The curer has been in high demand and the profits are good. Dr. Pulley is concerned about accepting royalties for the machine that was developed on official time.
- B. The Agency wants Dr. Pulley to serve as the Authorized Departmental Officer's Designated Representative (ADODR) for a Cooperative Research and Development Agreement (CRADA) with the Coffee Harvest Equipment Company, licensee of the patent for the coffee-berry curer. Dr. Pulley's spouse, a former employee of the Coffee Harvest Equipment Company, owns two shares of the company stock. Dr. Pulley wants to disqualify himself as ADODR because of the conflict-of-interest.
- C. The Agency decided not to file for foreign patent rights for Dr. Pulley's coffee-berry harvester. Although the fee was high, Dr. Pulley filed for a foreign patent personally and granted an exclusive license to the Coffee Harvest Equipment Company. Dr. Pulley now has an idea for a patentable improvement to the harvester and wants to pursue the idea under the Coffee Harvest Improvement CRIS.
- D. Dr. Pulley wants to accept a \$3,000 personal award and a \$10,000 research grant by the Coffee Producers Association. Dr. Pulley was selected for this honor by the Association's Awards Committee, composed of coffee producers, processors, and marketers. This new award which recognizes outstanding contributions to the coffee industry was made possible by a trust established for this purpose by a past president of the Association.
- E. Dr. Pulley wants to accept a \$1,000 award from the Brazilian Government. The award is being presented in appreciation for the design of a machine that will automate the harvest process for the coffee variety that is grown exclusively in the region around Brasilia.

Case 15: Dr. Pulley--Engineering Success-Continued

- F. The Agency has established a Cooperative Research and Development Agreement (CRADA) with the Coffee Harvest Equipment Company. The company wants Dr. Pulley to visit their production plant, at its expense, to discuss the concept used in the development of the "plucking" action of the coffee-berry harvester.

Case 15 Analysis: Dr. Pulley--Engineering Success

- A. The licensing arrangement for the coffee-berry curer is between the Agency and the Coffee Harvest Equipment Company and royalties are paid to ARS, not to Dr. Pulley. In compliance with the Technology Transfer Act, ARS will give Dr. Pulley at least 15% of the license fees and royalty income. This money will be presented to Dr. Pulley in the form of an Incentive Award from the Agency through an award process in which the licensee does not participate; therefore, this is not a conflicting financial interest. Like a performance award, the incentive award is not considered dual compensation for Government work.

- B. The Technology Transfer Act permits scientists to cooperate with industry only when there is no conflict-of-interest. Acceptance of royalties under the Technology Transfer Act does not constitute a personal financial interest and thus Dr. Pulley would not be barred by Federal conflict-of-interest statutes from participating in an official capacity in development and commercialization of the invention and accepting royalty payment on this basis. Ownership of Coffee Harvest Equipment Company stock by Dr. Pulley's spouse constitutes a conflict-of-interest because financial interests of a spouse disqualify an employee to the same extent as if they were the employee's own interests [2635.402]. Cooperation with another firm with which Dr. Pulley does not have a financial interest or divestiture (voluntary or directed) would eliminate the conflict and allow Dr. Pulley to serve as ADODR. If Dr. Pulley is willing to divest but waits until an official notice to divest is received before doing so, Dr. Pulley may be eligible for special tax treatment. Another option for dealing with the conflict is to have Dr. Pulley's colleague or Research Leader serve as ADODR. In this case, Dr. Pulley must be disqualified from any administrative actions involving the CRADA but he may participate in the CRADA and can accept the inventor's share of licensing fees and royalty income from patents for inventions made under the CRADA. The choice between directed divestiture and disqualification is a management decision which takes into consideration the needs of the Agency. If Dr. Pulley's spouse has an emotional attachment to the stock (e.g., a gift from a beloved grandfather) and no other suitable corporate cooperator or ADODR can be identified, the agency must secure a waiver from the appropriate ethics official or abandon the effort to establish the CRADA.

Case 15 Analysis: Dr. Pulley- Continued

- C. While the Technology Transfer Act permits Dr. Pulley to hold foreign patent rights the Government failed to assert, the conflict-of-interest statutes prohibit Dr. Pulley from participating personally and substantially for the Government in any matter in which there is a personal financial interest [18 U.S.C. Section 208] and receiving any contribution to salary from any source other than the United States as compensation for services as a Government employee [18 U.S.C. Section 209]. Dr. Pulley's patent rights represent a personal financial interest; thus, Dr. Pulley may not continue to conduct research that might lead to improvements in the coffee-berry harvester [2635.402]. Dr. Pulley must either be assigned to another project or must transfer the patent rights to the Agency, in which case, Dr. Pulley would be eligible for incentive awards based on royalties received by the Agency.
- D. Although the award is based on Dr. Pulley's past performance, Dr. Pulley may not accept the money [2635.204]. The Coffee Producer's Association is a prohibited source because it, and its members, has interests that may be substantially affected by official actions and have business relationships with the Government. The selection of the recipient is by the Association and the source of the money is a prohibited source. Further, an employee who receives an outside award (here, the \$3,000 personal award) is prohibited (ARS P&P 468.5) from making any decision (acceptance) that would result in a grant (the \$10,000 research grant) from the awarding party (the Association).
- E. The award is given by a foreign government and is more than \$245. By definition, this award is a gift under the Foreign Gifts and Decorations Act of 1966. Dr. Pulley may accept the award (gift) only on behalf of the United States, and must then take appropriate action to dispose of the gift. Dr. Pulley can refuse the award, but should seek guidance from management in determining which course of action to take.
- F. Coffee Harvest Equipment Company is a prohibited source, but under authority of Secretary Madigan's Announcement (6/30/92) and Financial Management Bulletin 96-4 concerning acceptance of travel expenses from non-Federal sources, Dr. Pulley may accept the travel expenses from the company because a cooperative agreement is in place.

Case 16: Dr. Spray--Herbicide Research Studies

For three years Dr. Spray has had a CRIS project to investigate the tolerance of new clover varieties to herbicides commonly used for weed control in legumes. Herbicides purchased at Southern States Cooperative were manufactured by Monsanto and DuPont.

- A. Dr. Spray wants to accept an invitation from Monsanto to speak to its staff on the research that was recently summarized in **Agricultural Research**. Monsanto will pay travel expenses.
- B. The Agency has a Research Support Agreement with a historically black university. Last year, Dr. Spray used CRIS funds to support a graduate student at the university to determine the effect of the herbicides on nodulation of clover roots. In lieu of the Graduate Teaching Assistantship that was to be the university's form of support for the second year of the student's program, Dr. Spray's collaborator at the university wants to use funds from a research grant that was recently received from Monsanto. This change in funding source would allow the student to work on the research project full time.
- C. Monsanto has just marketed a new herbicide that Dr. Spray has observed will promote drought tolerance in wheat. Dr. Spray wants to submit a grant proposal to Monsanto to obtain supplementary funding for a study of the mechanism of action of the new herbicide.
- D. Dr. Spray has inherited 1000 shares of Monsanto stock. **Standard and Poor's Corporation Records** indicate that Monsanto has 127,126,216 common shares of stock held by 60,152 stockholders. What action should Dr. Spray take?
- E. Dr. Spray wants to sign a contract with Ciba-Geigy to present a lecture to the employees of that company about herbicide interactions in the rhizosphere.
- F. A pharmaceutical company which has an active cancer research program wants to purchase a chemical synthesized by an Agency organic chemist for use in Dr. Spray's clover study. Dr. Spray and the organic chemist want guidance about the appropriate course of action.

Case 16 Analysis: Dr. Spray--Herbicide Research Studies

- A. By definition [2635.807], speaking relates to a Federal employee's official duties if the invitation or the offer of compensation for the speaking is extended by a prohibited source. Monsanto is a prohibited source. If management decides that there is a benefit for the Agency, Dr. Spray may speak to the Monsanto staff on official time, but may not disclose nonpublic information in the presentation or in response to questions. Unless a cooperative agreement is established between the Agency and Monsanto, Dr. Spray may not accept the travel funds from Monsanto [Secretary's Announcement 6/30/92; and Financial Management Bulletin 96-4]. To avoid the appearance of loss of impartiality, Dr. Spray should be willing to accept speaking invitations from other prohibited sources [2635.502].
- B. The university, not Monsanto, has a cooperative agreement with the Agency. Because Monsanto is a prohibited source, the university may not use funds from the Monsanto Grant to support research being conducted in cooperation with ARS.
- C. Monsanto is a prohibited source. Dr. Spray must ensure that the performance of his/her official duties do not give rise to an appearance of giving preferential treatment to Monsanto [2635.502, 2635.702]. If management determines that it is in the interest of the Agency, the Agency can establish a cooperative agreement with Monsanto and can accept funds to support research that is of mutual interest to the two organizations.
- D. Because of the nature of Dr. Spray's research assignment, ownership of the Monsanto stock constitutes a conflicting financial interest. Dr. Spray may disqualify himself/herself from making any administrative decisions concerning Monsanto or divest [2635.402]. Dr. Spray may be eligible to defer the tax consequences of divestiture if he/she is directed to divest. Divestiture prior to receipt of official notification to divest would disqualify Dr. Spray for the special tax treatment. The Agency Administrator could determine that Dr. Spray's financial interests in Monsanto is too remote or too inconsequential to affect the integrity of his/her services and issue an individual waiver under 18 U.S.C. 208(b)(2).

Case 16 Analysis: Dr. Spray- Continued

- E. Although Ciba-Geigy is a prohibited source for the Department of Agriculture, Dr. Spray has no official dealings with this company. Therefore, on personal time as an outside activity, Dr. Spray may speak on a subject within his/her discipline, even though the topic is related to his/her area of responsibility, and may include some results from his/her research as long as those results are available to the public [2635.807].
- F. The chemical is Government property and must be handled according to regulations for disposition of personal property [2635.704]. If management determines that there is a benefit for the Agency, a cooperative agreement between the Agency and the pharmaceutical firm can be established, giving the firm access to the chemical.

ETHICS WEBSITES

Please visit the following websites for additional information on ethics:

REE Ethics Home Page

www.ars.usda.gov/afm/hrd/hrdhomepage/ethics/ethics.htm

USDA Office of Ethics

www.usda.gov/ethics

U.S. Office of Government Ethics

www.usoge.gov

U.S. Office of Special Counsel

www.osc.gov

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